TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1887.

No. 106.

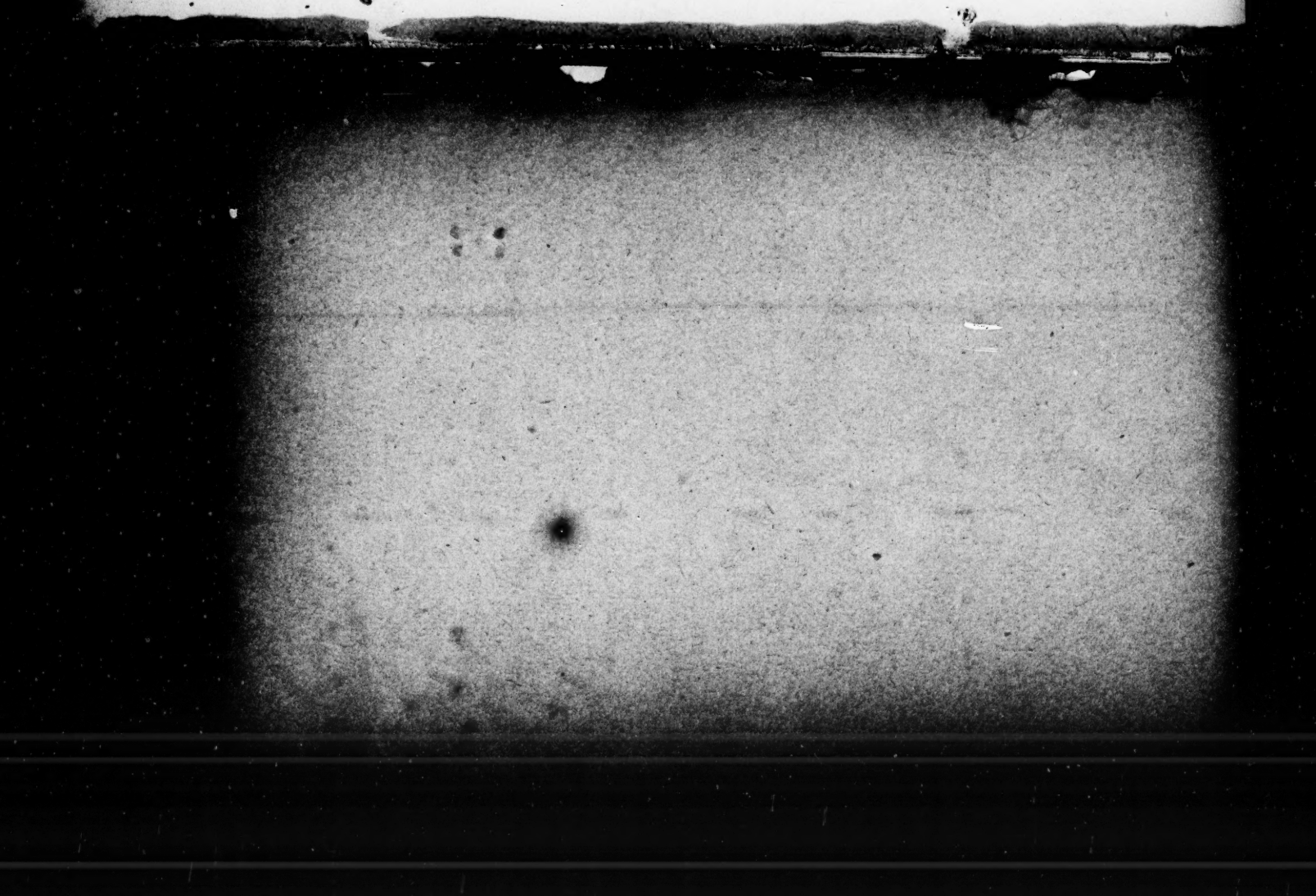
ALFRED RICHARDS, APPELLANT,

vs.

BROOKE MACKALL, JR.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FILED OCTOBER 15, 1884.



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1 *Original Bill. Filed Ap'l* 11, 1882.

In the Supreme Court of the District of Columbia. In Equity.

BROOKE MACKALL, Jr.,
vs.
ALFRED RICHARDS & Mrs. A. RICHARDS, His Wife, & LEONARD MACKALL. } No. 8118.

The complainant brings this his bill in equity against the above-named defendants, & thereupon says—

1st.

That he is a resident & citizen of the District of Columbia, & the defendants are also residents & citizens of said District, the said Mrs. Alfred Richards being the wife of said Alfred Richards & the said Leonard Mackall being the brother of complainant.

2nd.

That *on* or about the year 1851 Brooke Mackall, Sr., the father of complainant, purchased and paid for lot No. 7, in square 223, at the southwest corner of 14th street & New York avenue, in the city of Washington, D. C., of W. W. Corcoran & William S.
2 Nickolls & James Dunlop & the representatives of Francis S. Key, who were then the owners thereof, holding the legal & equitable title thereto, & took a contract in writing of said Corcoran, of which a copy is annexed hereto & marked Exhibit No. 1, & in pursuance thereof he then took possession of said property, which he continued to hold until deprived thereof, as hereinafter stated.

3rd.

That a conveyance of a moiety of said property was about that time executed by the said W. W. Corcoran, a copy of which is annexed & marked Exhibit No. 2, but owing to some controversies the said conveyance was not delivered to said Brooke Mackall, Sr., until Nov. 22nd, 1865, at which time it was so delivered.

4th.

That said Brooke Mackall, Sr., failing to obtain a conveyance of the moiety held by said Nickolls, Dunlop, & Key, a bill was
3 filed by him to compel such conveyance, & proceedings & conveyance were, therefore, had, as appears by copies thereof annexed & marked Exhibit No. 3.

5th.

In or about the year 1859 said Brooke Mackall, Sr., for good consideration, promised verbally to make a conveyance of said property to complainant & put him in possession thereof, & he, induced thereby & relying thereupon for the purpose of improveing said property, commenced the erection of a building thereupon and paid

large sums of money on account thereof, and in so doing incurred certain other indebtedness to divers persons; but the United States, having taken possession of the greater portion of the same for military uses, *and* prevented the completion of said building and continued to hold it for a long time, whereby he was deprived of the use of it, by reason of which he was unable to pay such indebtedness,

4 and thereupon suits were commenced and proceedings were had as follows, to wit:

George H. Plant filed his declaration against complainant January 19th, 1867—at law, No. 3478; judgment was obtained, executions issued, and were returned, as appears by copies thereof annexed and marked Exhibit No. 4.

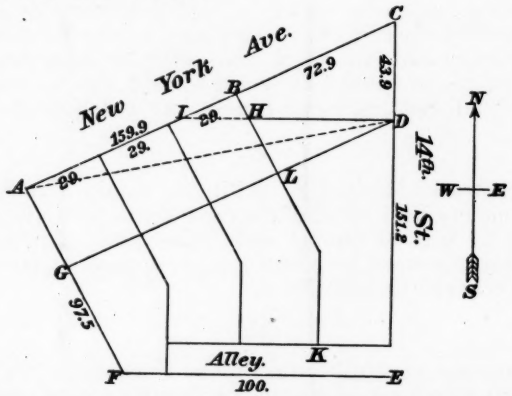
Mathew G. Emory filed his declaration against complainant January 19th, 1867—at law, No. 3477; judgment was rendered, executions issued, and were returned and appraisement made, as appears by copies thereof annexed and marked Exhibit No. 5.

On or about the first of October, 1867, the said Alfred Richards and one Thomas A. Richards recovered a judgment at law against complainant for the sum of $897.42, with interest and costs, and executions issued thereon and were returned, as shown by copies thereof annexed and marked Exhibit No. 6.

6th.

5 In the spring of 1870 advertisement of sale of a portion of said property was published in the Evening Star of said city and continuances thereof made, as appears by copy thereof hereto annexed and marked Exhibit No. 7; and on the 13th day of June, 1870, under color thereof, sale was made to the said Alfred Richards at the price of $2,500.

The following is a diagram of the said lot No. 7 and the property claimed to have been so sold:



The lines A C E F represent the outlines of said lot, and the lines A C D G represent the part thereof claimed to have been so purchased at said sale.

A copy of the conveyance, executed by the said marshal, purporting to have been made in pursuance of such sale, is annexed
6 and marked Exhibit No. 8.

Soon after the said Thomas A. Richards released and conveyed all his interest in said property to the said Alfred Richards by deed, duly executed and recorded.

8th.

The said $2,500 proceeds of sale were applied first to costs of sale, then to the satisfaction of the judgments of Plant and Emory, leaving to be credited on the judgment of A. & T. A. Richards $646.89. The said executions were issued and delivered to D. S. Gooding, who was then the marshal of the District of Columbia, but the alleged sale and conveyance were made by A. Sharp, who was the marshal of the District at the time of sale.

9th.

A short time after the execution of the said deed by said marshal, Sharp, to wit, in September, 1870, the said Alfred Richards, without the consent of complainant or his father, took possession of the property so sold, and claiming it to embrace all within the lines
7 running south from the southwest corner of 14th street and New York avenue 44 feet; thence running westerly on a line running parallel with New York avenue to the west end of the lot; thence northerly to New York avenue, and thence easterly along said avenue to the place of beginning, and has since held and is still holding possession of the property so taken by him, and has received the rents and profits, as shown by the following statement thereof made by his agent, which now amount to nearly the sum of $18,000:

WASHINGTON, *December* 9, 1880.

Judge W. Willoughby.

SIR: Without entering into absolute minutiæ, it is my opinion that the premises held in possession by A. and T. A. Richards, corner New York avenue and 14th street, have rented from July 1, 1871, as follows, viz:

Part to Emily Peterson, from July 1, 1871, to February, 1877, at $75 per month; thence forward at $50 per month, repairs
8 and commissions deducted. John O. Evans rented a part of same building from October, 1871, until February, 1873, at $100.

Febrey and Smith rented from February 1, 1873, until February, 1876, at $100.

F. J. Tibbitts rented from May 15, 1876, to January, 1879, at $100 per month; thence forward at seventy-five dollars, all, of course, subject to abatements, more or less, for repairs. Mrs. Peterson and Tibbitts continue tenants at the rendered rates mentioned.

JOS. C. G. KENNEDY.

10th.

The complainant, at the time of such sale and at divers times thereafter, complained to said Richards of the injustice done by such alleged sale and endeavored to procure an arrangement and compromise with him, he promising repeatedly to do what was right in the premises, and promising that as soon as he should be reimbursed by rents and profits or otherwise for the money he had ex-
9 pended he would release his claim upon said property, and promised from time to time to render an account of his claim, but no account was ever rendered, except one so extravagant that it could not be considered, and he never has been able to effect any arrangement with him.

On the 8th day of August, 1873, tender was made to said Richards of $1,362 to pay the entire judgment obtained by him against said complainant, which he refused.

On or about the 2nd day of April, 1873, the said B. Mackall, Sr., and wife executed a conveyance, a copy of which is annexed and marked Exhibit No. 9.

On the 13th day of January, 1874, the said Brooke Mackall, Sr., and Joseph B. Hill executed and delivered to the said Leonard Mackall, as trustee, a conveyance of this property, as appears by copy thereof annexed and marked Exhibit No. 10.

On the 3rd day of January, 1878, the said Leonard Mack-
10 all commenced a suit in the supreme court of the District of Columbia, No. 19635, in ejectment, to recover possession of said property and mesne profits, and trial was had, but judgment was rendered against him, which judgment was affirmed in April, 1882, by a majority of the court in banc, substantially upon the ground, as complainant is informed and believes, that the legal title of said Leonard Mackall as trustee had expired by reason of the death of said Brooke Mackall, Sr., which took place on the 7th day of March, 1880, during the pendency of said suit. Reference is made to the opinion of said court for a fuller statement of such grounds, to be hereafter filed. No further action has been taken in said cause by said trustee.

12th.

On the 27th day of February, 1880, the said Brooke Mackall, Sr., executed and delivered to this complainant a conveyance of his interest in said property and in the then pending suit in eject-
11 ment, as will be seen by Exhibit No. 11 hereto annexed.

The fair value of the property claimed to have been purchased by said Alfred Richards is, as complainant estimates and charges, not less than $40,000.

13th.

The said Alfred Richards has claimed certain other indebtedness, and he, in connection with other judgment creditors, filed a bill in equity to subject the remainder of the lot not claimed to have been sold by said marshal to the payment of such alleged in-

debtedness, which property would be amply sufficient to pay the whole thereof, as charged, in which suit it has been adjudged and decreed that complainant had an equitable interest in said property subject to the satisfaction of such liens, and a decree has been made in said suit to sell said property to pay such of said claims as may be established therein. No account of said claims has yet been taken in said suit, and the validity of any of them is not in-
12 tended to be admitted hereby.

14th.

The said Richards, as heretofore shown, has actually received rents and profits amounting to a large sum in excess of the judgments on which the alleged sale was made, but complainant is willing that he should be allowed what may be just and equitable on account of the said judgments as a set-off against the said rents and profits.

15th.

The said Richards, instead of applying the rents and profits or a sufficient portion thereof to the payment of taxes assessed against the said property or providing for their payment, as in duty he is bound to do, has converted the same to his own use regardless of such payment, by reason of which a large amount of unpaid taxes has accumulated, to wit, several thousands of dollars, and on account of this sale is threatened to be made, to the great dam-
13 age of the interests of complainant therein. The amount for rents and profits which have accumulated is already very large and is rapidly increasing, and complainant is apprehensive that he has not sufficient security therefor without the same can be taken possession of by the court and payment of taxes be made from rents and profits and other orders made whereby the same cannot be misapplied or wasted.

16th.

The complainant is advised and charges that the alleged sale of said property by the marshal is invalid and void for the following reasons, to wit:

1st. The sum at which it was bid of- was grossly insufficient and inadequate compared with the value of the property.

2nd. The executions on which the sale was made were issued without authority for the reason that at the time other executions had been issued, which had not been returned.

3rd. Such executions were not in accordance with the judg-
14 ments, said judgments being personal judgments only, while the executions directed the sale to be of specific property described therein.

4th. Such executions did not sufficiently describe the nature of the interest of the debtor in said property, whether legal or equitable or otherwise, nor define the boundaries thereof so that the property could be identified, nor did they conform to the description in the declarations in said suits or either of them.

5th. The court rendering the judgments in the first two cases named in paragraph 5 did not have jurisdiction to render any other than personal judgments, the proper court for the enforcement of a mechanic's lien being in equity.

6th. The said Brooke Mackall, Sr., was not a party to any of the said proceedings or suits, although he then held the legal title.

7th. The sale of an equitable interest in real estate cannot be made under executions at law, whether by enforcement of a mechanic's lien or otherwise.

15 8th. The interest of Brooke Mackall, Sr., whether legal or equitable, could not be divested from him by any proceeding to which he was not a party; said complainant then had no interest except that arising from a verbal promise to convey and his action thereon, as before described.

9th. The alleged levies and sale were made long after the return day of the writs.

10th. The said executions were issued and delivered to D. S. Gooding, who was then the marshal of the District of Columbia, whereas the advertisement, sale, and conveyance purport to have been made by Alexander Sharp, who was marshal at the time of sale.

11th. The advertisement of sale does not sufficiently describe the property nor the nature of the interest to be sold, nor does it agree with the other proceedings in the cause.

12th. The conveyance by the marshal does not conform to any of the other proceedings in any of the said causes.

16 For these defects, irregularities, want of authority, and other defects in said proceedings the complainant believes and charges that the purchase, made, as it was, by a judgment creditor of one of said executions, was enabled to be made at the merely nominal sum of $2,500.00, and thereby was caused a most unjust and iniquitous sacrifice of said property, and said purchaser thereby obtained an advantage which he is not entitled to hold.

Prayers.

1st. Complainant prays that the sale and conveyance made by said marshal to the said Alfred Richards, and all transfers and conveyances depending thereon, may be adjudged and decreed to be invalid and void.

2nd. That the complainant may be adjudged and decreed to be the owner of said property, and that he may have title and possession thereof free from any claim arising from such sale and conveyance.

3rd. That an account be taken of all rents, issues, and
17 profits received by said Alfred Richards from the said property, and that complainant have judgment and decree for such amount, subject to all legal and proper deductions.

4th. That a receiver be appointed to take possession of said property during the pendency of this suit; that rents and profits be directed to be applied to the payment of proper taxes unpaid or to

become due thereon, and proper security be given for such rents and profits as may hereafter accrue, and such other orders made as will protect and secure the interest of complainant therein.

5th. That the said Leonard Mackall may be decreed to convey the legal title to complainant or his order.

6th. The complainant prays that process may issue against the defendants, Alfred Richards and Mrs. A. Richards, his wife, and Leonard Mackall, requiring them and each of them to fully and truely answer, upon their & each of their corporeal oaths, the
18 several allegations in said bill contained as if the same were here again repeated.

7th. That complainant may have such other and further relief as may be just and equitable.

B. MACKALL, JR.

W. WILLOUGHBY,
Sol. for Comp't.

DISTRICT OF COLUMBIA, *ss:*

Brooke Mackall, Jr., being sworn, says: "I do solemnly swear that I have read the above bill by me subscribed and know the contents thereof, and that the facts therein stated upon my personal knowledge are true, and that the facts stated therein upon information and belief I believe to be true."

B. MACKALL, JR.

Subscribed and sworn before me April 11, 1882.
[L. S.] R. J. MEIGS, *Cl'k,*
By R. J. MEIGS, JR., *Ass't.*

19 EXHIBIT No. 1 to Original Bill. Filed April 11, 1882.

Exhibit No. 1.

I hereby agree to sell to Brooke Mackall, and he takes, the undivided half of lot seven, in square two hundred & twenty three, said half containing 7,499⅓ square feet, more or less, at thirty cents per square ft., amounting to $2,249.80 for that number, *on at* of which I hereby acknowledge to have received the sum of two hundred and forty-nine $\frac{80}{100}$ dollars, and he is to give his note at thirty days, with interest for two thousand dollars, privileged to pay the same at any time within thirty days from date, and on full payment of said note and interest I am to execute and deliver him a deed conveying all my right, title, and interest in and to said undivided half.

Washington, Nov. 19, 1851.
(Signed) W. W. CORCORAN.

Rents to date, to present owners.

20 EXHIBIT No. 2 to Original Bill. Filed April 11, 1882.

Exhibit No. 2.

This indenture, made this first day of March, in the year of our Lord one thousand eight hundred and fifty-two, by and between

William W. Corcoran, of Washington city, of the first part, and Brooke Mackall, of the same place, of the second part, witnesseth:

That the said party of the first part, for and in consideration of the sum of two thousand two hundred and forty-nine $\frac{80}{100}$ dollars, current money in the United States, to him in hand paid at and before the ensealing and delivery of these presents by the said Brooke Mackall, the receipt whereof is hereby acknowledged, hath given, granted, bargained, and sold, aliened, enfeoffed, conveyed, and confirmed, and by these presents doth give, grant, bargain, and sell, alien, enfeoff, convey, and confirm, unto him, the said Brooke Mackall, and his heirs and assigns forever one undivided
21 moiety or half part of lot numbered seven (7), in square numbered two hundred and twenty-three (223), as distinguished on the public plat of the city of Washington, together with all and singular the buildings, improvements, rights, ways, privileges, and appurtenances to the same belonging or in any matter appertaining, and the remainders, reversions, rents, issues, and profits of the same, and all the right, title, interest, and estate of him, the said party of the first part, in and to the same; to have and to hold the said lots, pieces, or parcels of ground and premises, with the appurtenances as aforesaid, unto him, the said Brooke Mackall, and to his heirs and assigns, to his and their only use, benefit, and behoof forever; and the said party of the first part, for himself, his heirs, executors, and administrators, hereby covenants, promises, and agrees to and with the said party of the second part, and his heirs, executors, administrators, and assigns, in the manner and form following—that is to say,
22 that he, the said party of the first part, and his heirs shall and will warrant and forever defend the said lots, pieces, or parcels of ground and premises, with the appurtenances as aforesaid, hereby conveyed or intended to be conveyed unto him, the said party of the second part, his heirs and assigns, from and against him, the said party of the first part, his heirs and assigns, and against all persons claiming or to claim the said described premises or any part thereof by, through, or under them or any and every of them; and, further, that he, the said party of the first part, and his heirs shall and will at any and all times hereafter, at the cost and request of the said party of the second part, his heirs and assigns, make, execute, and deliver such other and further assurances in law for the more perfect conveyance of the premises as aforedescribed unto him, the said party of the second part, and his heirs and assigns, as he
23 or they or his or their counsel learned in the law shall or may devise, advise, and require.

In testimony whereof the said party of the first part has hereunto set his hand and seal the day and year first hereinbefore written.

W. W. CORCORAN. [SEAL.]

Signed, sealed, and delivered in the presence of *me*—the date being first altered from "December" to "March" and from "fifty-one" to "fifty-two"—

ANTHONY HYDE.
N. B. VAN ZANDT.

DISTRICT OF COLUMBIA, *County of Washington,* } *To wit:*

We, Anthony Hyde and Nicholas Biddle Van Zandt, justices of the peace in and for the county of Washington aforesaid, do hereby certify that William W. Corcoran, who is personally well known to us as the identical person who executed the foregoing and annexed deed, bearing date the first day of March, A. D. 1852, appeared before us, in our county aforesaid, and acknowledged the same
24 to be his free act and deed.

Given under our hands and seals this first day of March, A. D. eighteen hundred and fifty-two.

ANTHONY HYDE. [SEAL.]
N. B. VAN ZANDT.

Received for record Sept. 29, 1873, and recorded in liber No. 731, folio 170, *et seq.*, one of the land records of the District of Columbia, and examined by—

S. WOLF, *Recorder.*

25 EXHIBIT No. 3 to Original Bill. Filed April 11, 1882.

Exhibit No. 3.

To the hon. judges of the circuit court of the District of Columbia for the county of Washington, sitting in equity:

Humbly complaining, sheweth unto your honors your orator, Brooke Mackall, that on the 25th day of July, in the year eighteen hundred and thirty-one, a certain Edward Thompson, of Philadelphia, conveyed lot No. seven, in square No. two hundred and twenty-three, in the city of Washington, to William S. Nickolls, of Georgetown, D. C., in trust to sell the same at public or private sale and for cash or upon credit, with the assent of Francis S. Key and James Dunlop, of said Georgetown, and on payment of the purchase-money to convey the same in fee-simple to the purchaser, and out of the proceeds of sale to pay the reasonable expenses attending the execution of the trust; in the next place, to pay to Francis
26 S. Key and James Dunlop, Esqs., one-half of the proceeds of the sale of said lot for legal services rendered by them, and the balance of the purchase-money to pay over to the assignees of said Thompson, viz., Richard Renshaw and Peter Mackie, all of which will appear by reference to a copy of said deed herewith filed, marked Exh't A B, which your orator prays may be taken as part of this bill of complaint.

Your orator is advised that the said deed constituted the said William S. Nickolls a trustee as to one undivided moiety of said lot for the said Renshaw & Mackie, and as to the other moiety for the said Key & Dunlop, and that upon a sale by said parties of their respective interests in said property the said Nickolls would be bound to convey accordingly.

And your orator further shews that the said Nickolls heretofore purchased in his own right the interest of said Renshaw & Mackie in said property, viz., one undivided moiety thereof, and subsequently sold the same to William W. Corcoran, from whom it has been purchased by your orator, and that your orator has likewise purchased from the said James Dunlop and the representatives of the said Francis S. Key all their interest in said premises, so that he is now the sole and exclusive owner thereof.

27

And your orator further shows that, being entitled to a conveyance of said lot from said trustee, your orator has called upon him for a deed of the moiety to said lot to which said Key & Dunlop were entitled, and he has refused to execute said deed, whereby your orator has incurred great inconvenience & loss, having been thereby prevented from selling said property at a considerable profit.

Your orator is advised that his only relief is through your hon. court, and that he is entitled to relief by a decree of your hon. court requiring said Nickolls to execute said conveyance.

In tender consideration whereof and forasmuch as your orator is without adequate relief at common law, and to the end that the said William S. Nickolls may be made a party defendant hereto and may be required to make true, full, and perfect answers on his corporal oath to the several matters herein alleged, and that your honors may require him to execute a good and sufficient deed in fee-simple to your orator of the undivided moiety of said lot of ground purchased by him from said James Dunlop and the reps. of said Francis S. Key as aforesaid, and may grant such other & further relief in the premises as may be just and equitable—all of which your orator humbly prays—may it please your honors, the premises considered, to grant the usual writ of subpœna, &c.; & he will ever pray, &c.

28

(Signed) WALTER S. COX, *Sol'r.*

Circuit Court of the District of Columbia for the County of Washington. In Equity.

B. M. *vs.* W. S. N.

"In this case it appears to the court that the defendant, W. S. N., has not appeared and answered the bill of complaint within the time required by the rule of this court. The 16th day of May, A. D. 1856, ordered that the bill of complaint be taken *pro confesso* against the said defendant, W. S. N.; and it is further ordered, adjudged, and decreed that the prayer of the said bill be granted, and that said defendant do forthwith convey to said complainant, B. M., his heirs and assigns, by good and sufficient deed in fee-simple, the moiety of the premises described in said bill of complaint, it having been purchased by said complainant from J. D. and the representatives of Francis S. Key, deceased, said complainant to cause said deed to be prepared, and to tender the same to said Nickols for execution; the decree to be absolute against said defendant in case no cause shall be shown to the contrary at or before

29

the term of the court next subsequent to that to which the
30 decree shall be returned executed.

By order of the court:

JOHN A. SMITH, *Clerk.*

True copy. JOHN A. SMITH, *Clerk.*

BROOKE M. *vs.* W. S. N.

AUGUST 31, 1856.

B. M., 1 Exhibit, sub. to Sep. and Oct. May 6, 1856, decree. New copies sent to be served and returned by the marshall 20 May. Served November 6. Decree made final with costs.

Circuit Court of the District of Columbia for the County of Washington.

B. M. *vs.* W. S. N.

It appearing to the court that no cause has been shown to the contrary,

It is by the court this sixth day of November, A. D. 1856,
31 ordered that the decree *nisi* passed in this case the 16th day of May last be, and is hereby, made final and absolute against the defendant, W. S. N.; and it is further ordered and decreed that said defendants do pay the costs of this suit.

By order of the court.

Test: JOHN A. SMITH, *Clerk.*

32 EXHIBIT No. 4 to Original Bill. Filed April 11, 1882.

Exhibit No. 4.

In the Supreme Court of the District of Columbia, the 19th day of January, 1867.

GEORGE H. PLANT, Plaintiff,
v.
BROOKE MACKALL, Jr., Defendant. } At Law. No. 3478.

[Seal Supreme Court of the District of Columbia.]

The President of the United States to the marshal for said District, Greeting:

Summon the defendant in the above-entitled case to appear in said court on or before the first special term thereof occurring twenty days after service of this writ and answer the declaration herewith served, and warn him that on default of so doing the plaintiff may proceed to judgment and execution at the trial term of said court next after said service; and do you return this writ into the clerk's office immediately after service so indorsed as to show the time and manner of executing it; and if you cannot serve

it within six months, the day of its issuance exclusive, then
33 return it into said office for renewal.

Witness:

(Signed) D. K. CARTTER,
Chief Justice of said Court.

(Signed) R. J. MEIGS, *Clerk.*

KENNEDY & WEBB.

Indorsements on the back of the summons:

Received July 16, '67.
Served copy of summons & decla. on def't.
July 17th, '67.
(Signed) D. S. GOODING, *Marshal.*

Service acknowledged.
(Signed) B. MACKALL, JR.

Petition.

Supreme Court of the District of Columbia.

GEORGE H. PLANT, Plaintiff,
vs.
BROOKE MACKALL, Jun'r, Defendant. } At Law. No. 1866.

The plaintiff sues the defendant and files this his complaint against him, and says that heretofore, to wit, on the — day
34 of December, A. D. 1864, he sold and delivered to the said defendant five thousand three hundred and thirty-three press bricks at and for the price of $25 per thousand, amounting to $133.33, on which the said defendant is entitled to a credit of $5.55, as shown by the annexed account; that the said bricks were sold and delivered to the said defendant under a contract made by the said plaintiff with the said defendant that the said plaintiff would sell and deliver the said bricks to the said defendant at the premises hereinafter described at and for the price of $25 per thousand; that the said defendant, at the time the contract for the sale of the said brick was made, was the owner in fee-simple of that part of lot numbered seven (7), *on* square numbered two hundred and twenty-three (223), in the city of Washington, contained within the following metes and bounds: Beginning for the same at the northeast corner of the said square and running thence south forty-four feet; thence
35 west to the west line of said lot; thence in a northerly direction with the west line thereof to the north line of the said lot, and thence in a northeasterly direction with the said north line to the place of beginning, and of the building being erected thereon; that the said bricks were furnished to the said defendant at the said premises, to be used in the construction of the building being erected thereon, and were actually used in the construction thereof; that the said plaintiff, on April 20th, 1865, filed a notice of his intention to hold a lien on the said parcel of land and building for the price and value of the said bricks under and by virtue of the provisions of the act of Congress entitled "An act for the enforcement

of mechanics' liens on building-, and so forth, in the District of Columbia," approved Feb. 2nd, 1859; that the said building has a front of forty-four feet on 14th street west, has been carried up to the third story, which is not yet completed, and the said building
36 is now in an unfinished condition, and that there is now due to the said plaintiff the sum of one hundred and twenty-seven dollars and seventy-eight cents ($127.78) after allowing the said credit of $5.55, with interest on the said sum of $127.78 from December 3rd, 1864.

The said plaintiff prays that the said premises may be sold and the proceeds of sale applied to the payment of the said claim of the said plaintiff and of all other liens on the said premises in the manner provided by the statute in such cases made and provided.

(Signed) WM. F. MATTINGLY &
KENNEDY & WEBB,
Atty's for Pl'ff.

The defendant is to plead hereto on or before the first special term of the court occurring twenty days after the service hereof; otherwise judgment.

(Signed) WM. F. MATTINGLY &
KENNEDY & WEBB,
Attorneys for the Plaintiff.

37 WASHINGTON, D. C., *Dec. –rd*, 1864.

Mr. B. Mackall, Jr., to Geo. H. Plant, Dr.

To 5,333 press bricks delivered, at $25.00 per thousand---	$133 33
Cr., by 222 arch bricks, at 2½----------	5 55
	$127 78

Filed Jan. 19th, 1867.

In the Supreme Court of the District of Columbia.

BROOKE MACKALL, Jr., *ats.* GEORGE H. PLANT. } At Law. No. 3478.

The defendant says he was never indebted as alleged.
The defendant says he did not promise as alleged.

(Signed) JOHN D. McPHERSON,
Attorney for the Defendant.

Indorsement on the back:

G. H. PLANT *vs.* B. MACKALL, Jr. } 3478.

The clerk will please file this plea.
Sept. 3rd, 1867.

(Signed) J. D. McPHERSON,
Att. for Def't.

Filed 3rd Sept., 1867.

38 In the Supreme Court of the District of Columbia, the 6 of September, 1867.

GEORGE H. PLANT
v.
BROOK MACKALL, Jr. } No. 3478.

The plaintiff takes issue upon the defendant's first and second pleas.

(Signed) KENNEDY & WEBB, *For Pl'ff.*

Filed Sept. 7th, 1867.

GEORGE H. PLANT, Pl't'ff,
v.
BROOK MACKALL, Jr., Def't. } Law. 3478.

The plaintiff, by his attorneys, Messrs. Kennedy and Webb, prays judgment of his demand against the defendant, who, by his attorney, Mr. McPherson, relinquishes his plea and says that he cannot deny but that the plaintiff ought to have judgment against him for one hundred and twenty-seven $\frac{78}{100}$ dollars, with interest thereon from December 3, 1864. Therefore it is considered that the plaintiff
39 recover against the defendant said sum of one hundred and twenty-seven $\frac{78}{100}$ dollars, with interest as aforesaid, and $20.65 for his costs of suit, and that he have execution thereof, to be levied of the premises described in the declaration & other property of the defendant.

Execution No. 1.

In the Supreme Court of the District of Columbia, the 17th day of April, 1868.

GEORGE H. PLANT, Plaintiff,
v.
BROOKE MACKALL, Jr., Defendant. } At Law. No. 3478.

The President of the United States to the marshal for said District, Greeting:

You are hereby commanded that of the goods and chattels, lands and tenements, of the defendant, particularly part of lot 7, sq. 223, in the city of Washington—beginning at the northeast corner of said square, thence south 44 —; thence west to the west line of the lot; thence in a northerly direction with the west line thereof to the north line of said lot, & thence with said north line to the place of beginning—you cause to be made $177.78, which the plaintiff lately in said court in said suit recovered of said defendant for his damages, and the further sum of $20.65 for his costs and charges by him about his suit expended, as appears of record, and return this writ into the clerk's office of said court within 60 days
40 from the date hereof so indorsed as to show when and how you have executed the same.

Witness D. K. Cartter, chief justice of said court.
(Signed) R. J. MEIGS, *Clerk.*

KENNEDY & WEBB.

Indorsement on back of execution:

Nulla bona. (Signed) D. S. Gooding, marshal. March 3rd, '69.

Execution No. 2.

In the Supreme Court of the District of Columbia, the 26th day of February, 1869.

GEORGE H. PLANT, Plaintiff,
v.
BROOKE MACKALL, Jr., Defendant. } At Law. No. 3478.

41 The President of the United States to the marshal for said District, Greeting:

You are hereby commanded that of the goods and chattels, lands and tenements, of the defendant, particularly part — lot 7, sq. 223, in the city of Washington—beginning at the northeast corner of said square, thence south 44 feet; thence west to the west line of the lot; thence in a northerly direction with the west line to the north line of said lot, and thence with said north line to the place of beginning—you cause to be made $177.78, which the plaintiff lately in said court in said suit recovered of said defendant for his damages, and the further sum of $20.65 for his costs and charges by him about his suit expended, as appears of record, and return this writ into the clerk's office of said court within 60 days from the date hereof so indorsed as to show when and how you have executed the same.

Witness:
(Signed) D. K. CARTTER,
Chief Justice of said Court.
(Signed) R. J. MEIGS, *Clerk.*

42 Indorsements on the back of execution:

Fi. Fa.

GEORGE H. PLANT
v.
BROOKE MACKALL, Jr. } 3478.

Damages, $127.78, with int. from 3rd Dec., 1864, til- paid, & co. costs, $20.65; ad. co., 3.40.

Levied, as per schedule, March 24th, 1869—"see in No. 3477, & satisfied pl'ff's att'y"—see his order on back of writ.

June 13th, '70.
(Signed) A. SHARP, *Marshal.*

Debt	127 78
Int. from 3rd Dec., '64, to June 13th, '70	42 13
Cost	24 05
	$193 96
Marshal's fees	7 14
	$201 12

The marshal will return this execution satisfied.
June 13th, '70.
(Signed) KENNEDY & WEBB.
W. B. WEBB,
Att'y for Plant.

43 EXHIBIT No. 5 to Original Bill. Filed April 11, 1882.

Exhibit No. 5.

In the Supreme Court of the District of Columbia, the 19th day of January, 1867.

MATHEW G. EMORY, Plaintiff,
v.
BROOKE MACKALL, Jr., Defendant. } At Law. No. 3477.

The President of the United States to the marshal for said District, Greeting:

Summon the defendant in the above-entitled case to appear in said court on or before the first special term thereof occurring twenty days after service of this writ and answer the declaration herewith served, and warn him that on default of so doing the plaintiff may proceed to judgment and execution at the trial term of said court next after said service; and do you return this writ into the clerk's office immediately after service so indorsed as to show the time
44 and manner of executing it; and if you cannot serve it within six months, the day of its issuance exclusive, then return it into said office for renewal.

Witness:
(Signed) D. K. CARTTER,
Chief Justice of said Court.
(Signed) R. J. MEIGS, *Clerk.*
K. & W.

Indorsements on the back of summons:

Served copy of summons & declaration on def't.
July 17th, '67.
(Signed) D. S. GOODING, *Marshal.*

Service acknowledged.
(Signed) B. MACKALL, JR.

Supreme Court of the District of Columbia.

MATHEW G. EMORY, Plaintiff,
v.
BROOK MACKALL, Jr. } At Law. No. —.

The plaintiff sues the defendant and files this his complaint against him, and says that heretofore to wit, on the 12th day of November, 1864, on the — day of December, in the same year,
45 and on the 19 day of May, 1865, he sold and delivered to the said defendant a quantity of stone and did certain labor, as shown by the annexed account; that the said stone was sold and delivered to the said defendant and the said labor was done under a contract made by the said plaintiff with the said defendant that the said plaintiff would sell and deliver the said stone to the said defendant and do the work at and upon the premises hereinafter described at and for the prices mentioned in the account filed with the notice of lien in this case; that the said defendant, at the time the contract for the sale of the said stone was made and for the said labor to be done, was the owner in fee-simple of that part of lot numbered seven (7), in square numbered 223, in the city of Washington, contained within the following metes and bounds: Beginning for the same at the northeast corner of said lot and running thence south forty-four feet; thence west to the west line of said lot;
46 thence with a line at right angles to New York avenue to the north line of said lot, and thence in a northeasterly direction with the said north line to the place of beginning and of the building being erected thereon; that the said stone was furnished and the said labor done for the said defendant at the said premises to be used in the construction of the building being erected thereon, and were actually used & performed in the construction thereof; that the said plaintiff, on the 9 of August, 1865, filed a notice of his intention to hold a lien on the said parcel of ground and building for the price and value of the said stone and labor, under and by virtue of the provisions of the act of Congress entitled "An act for the enforcement of mechanics' liens on buildings, and so forth, in the District of Columbia," approved February 2nd, 1859; that said building has been carried up to the third story, which is not completed, and that the said building is now in an unfinished condition, and that there is now due to the said plaintiff one thousand and eighty-one
47 dollars and fifteen cents ($1,081.15), with interest from November 12, 1864.

The said plaintiff prays that the said premises may be sold and the proceeds of sale be applied to the payment of the said claim of the said plaintiff and of all other liens on the said premises, in the manner provided by the statute in such cases made and provided.

(Signed) KENNEDY & WEBB,
For Plaintiff.

The defendant is to plead hereto on or before the first special term of the court occurring twenty days after the service hereof; otherwise judgment.

(Signed) KENNEDY & WEBB,
For Plaintiff.

Copy of Account.

Mr. Brook Mackall, Jr., to M. G. Emory, Dr.

1864.		
Nov. 12.	Stone, &c.	$1,075 59
Dec. —.	Labor of cutter	4 00
1865.		
May 19.	Stone	1 56
		$1,081 15

Filed Jan. 19th, 1867.

48 MATHEW G. EMORY, Pl'ff,
v.
BROOK MACKALL, Jr., Def't. } At Law. No. 3477.

The plaintiff, by his attorneys, Messrs. Kennedy & Webb, prays judgment of his demand against the defendant and files the following writing:

"The clerk will enter judgment in this case with stay of execution for one year from date.

"B. MACKALL, JR."

Therefore it is considered that the plaintiff recover against said defendant one thousand and eighty-one dollars and fifteen cents, with interest from November 12, 1864, with the sum of $20.55 for his costs of suit, and that he have execution thereof from and after the 3d day of September, 1867.

Execution No. 1.

In the Supreme Court of the District of Columbia, the 17th day of April, 1868.

MATHEW G. EMORY, Plaintiff,
vs.
BROOKE MACKALL, JR., Defendant. } At Law. No. 3477.

49 The President of the United States to the marshal for said District, Greeting:

You are hereby commanded that of the goods and chattels, lands and tenements, of the defendant, particularly part of lot No. 7, sq. 223, in the city of Washington—beginning at the northeast corner of said square; thence south 44 feet; thence west to the west line of the lot; thence in a northerly direction with the west line thereof to the north line of said lot, and thence with said north line to the place of beginning—you cause to be made $1,081.15, which the

plaintiff lately in said court, in said suit, recovered of said defendant for his damages, and the further sum of $20.55 for his costs and charges by him about his suit expended, as appears of record, and return this writ into the clerk's office of said court within 60 days from the date hereof so indorsed as to show when and how you have executed the same.

Witness:

(Signed) D. K. CARTTER,
Chief Justice of said Court.

(Signed) R. J. MEIGS, *Clerk.*

KENNEDY & WEBB.

50 Indorsement on the back of execution:

Nulla bona. (Signed) D. S. Gooding, marshal. March 3rd, '69.

Execution No. 2.

In the Supreme Court of the District of Columbia, the 26th day of February, 1869.

MATHEW G. EMORY, Plaintiff,
vs.
BROOKE MACKALL, Jr., Defendant. } At Law. No. 3477.

The President of the United States to the marshal for said District, Greeting:

You are hereby commanded that — the goods and chattels, lands and tenements of the defendant, particularly part of lot 7, sq. 223, in the city of Washington—beginning at the northeast corner of said square, thence south 44 feet; thence west to the west line of the lot; thence in a northerly direction with the west line thereof to the north line of said lot; thence with said north line to the place of beginning—you cause to be made $1,081.15, which the plaintiff lately in said court, in said suit, recovered of said defendant for his damages, and the further sum of $20.55 for his costs and charges by him about his suit expended, as appears of record, and return this writ into the clerk's office of said court within 60 days from the
51 date hereof so indorsed as to show when and how you have executed the same.

Witness:

(Signed) D. K. CARTTER,
Chief Justice of said Court.

(Signed) R. J. MEIGS, *Clerk.*

K. & W.

Indorsement on the back of execution :

Fi. Fa.

MATHEW G. EMORY
v.
BROOK MACKALL, Jr. } 3477.

Damages, $1,081.15, with interest from 12th Nov., 1864, til- p'd & co. cost-, $20.55 ; ad. co., 3.40.

Levied, as per schedule, March 24th, 1869, & satisfied pl'ff's att'y. See his order on back of writ.

June 13th '70.

(Signed) A. SHARP,
Marshal.

52	Debt	$1,081 15
	Int from Nov. 12th, 1864, to Sept. 2d, '69	313 49
Cost-		23 95
		$1,418 59
Marshal'-fees		25 39
Add int. from Sept. 2d, '69, to June 13th '70		39 82
		$1,483 80

The marshal will return this execution satisfied June 13th, 1870.

(Signed) KENNEDY & WEBB,
By W. B. WEBB,
For Pl' ff's.

Fi. Fa.

MATHEW G. EMORY
vs.
BROOK MACKALL, Jr. } No. 3477.

Fi. Fa.

GEO. H. PLANT
vs.
SAME. } No. 3478.

Fi. Fa.

J. D. PARKINSON
vs.
BROOK MACKALL, Jr. } No. 4178.

53

Fi. Fa.

OWEN & WILSON, Sur. Part. of Corwen, Owen & Wilson,
vs.
SAME. } No. 3708.

Schedule.

Levied on part of lot 7, in square No. 223, in the city of Washington, D. C., beginning at the northeast corner of said square;

thence south 44 feet; thence west to the west end of the lot; thence in a northerly direction with the west line thereof to the north line of said lot; thence with said north line to the place of beginning, together with the improvements thereon, in the city of Washington, D. C.

We, the undersigned, citizens of the District of Columbia, having been duly summoned & sworn by the marshal of said —, do appraise the property named in the above schedule to the sum of fifteen thousand dollars.

Witness our hands & seals this 24th day of March, 1869.

(Signed) GEORGE H. PLANT. [SEAL.]
" WILLIAM G. GALLANT. [SEAL.]
" ALONZO R. FOWLER. [SEAL.]

54 EXHIBIT No. 6 to Original Bill. Filed April 11, 1882.

Exhibit No. 6.

In the Supreme Court of the District of Columbia, the 9th of September, 1867.

ALFRED RICHARDS and THOMAS A. RICHARDS, Trading as A. & T. A. Richards, *vs.* BROOK MACKALL, Jr. } At Law. No. —.

Declaration.

The plaintiffs sue the defendant for money payable by the defendant to the plaintiffs, for that the said defendant, on the 2nd day of June, 1865, by his promissory note in writing, for value received, promised to pay to Brooke Mackall, or order, $897.42 in ninety days after date, with interest, payable at the bank of Riggs & Co., and the said Brooke Mackall then endorsed the note to plaintiffs, of which defendant then had notice, and in consideration thereof then promised plaintiffs to pay them the amount of said note, according to the tenor thereof; yet the defendant has not paid the same, &c.,
55 and the plaintiff- claim $1,000, according to the annexed particulars of demand.

(Signed) KENNEDY & WEBB *For Pl'ffs.*

The defendant is to plead hereto on or before the first special term occurring twenty days after service hereof; otherwise judgment.

(Signed) KENNEDY & WEBB, *For Pl'ff.*

Amount of note of Brooke Mackall, Jr., June 2nd, '65, 90 days, with int.	$897 42
Int., costs, protest, &c.	202 58
	$1,100 00

Filed Sept. 10th, 1867.

ALFRED RICHARDS & THOMAS A. RICHARDS,
Firm of H. & T. A. Richards, Pl'ffs,
v.
BROOKE MACKALL, Junior, Defendant.
} At Law. No. 4117.

The plaintiffs, by their attorneys, Messrs. Kennedy & Webb, come and file the following writing: "The clerk will please enter judgment in the above case for def't, interest and costs, with stay of
56 execution until 1st of March, 1868—B. Mackall, Jr.," and pray judgment accordingly; therefore it is considered that the plaintiffs recover against said defendant eight hundred and ninety-seven dollars and forty-two cents, with interest thereon from June 2, 1865, and $18.85 for their costs of suit, and that they have execution thereof from and after March 1st, 1868.

Execution No. 1.

In the Supreme Court of the District of Columbia, the 17th day of April, 1868.

ALFRED RICHARDS & THOMAS A. RICHARDS,
Plaintiffs.
v.
BROOKE MACKALL, Jr., Defendant.
} At Law. No. 4117.

The President of the United States to the marshal for said District, Greeting:

You are hereby commanded that of the goods and chattels, lands and tenements, of the defendant you cause to be made $897.42, which the plaintiffs lately in said court, in said suit, recovered of said defendant for their damages, and the further sum of $18.85 for their costs and charges by them about their suit expended, as ap-
57 pears of record, and return this writ into the clerk's office of said court within 60 days from the date hereof so indorsed as to show when and how you have executed the same.

Witness:

(Signed) D. K. CARTTER,
Chief Justice of said Court.

(Signed) R. J. MEIGS, *Clerk.*

K. & WEBB.

By virtue of this writ I have caused to be made of the goods and chattels, &c., of the defendant $— and $— for his costs and charges, which I have deposited in the bank of — and delivered to the clerk a certificate of said deposits.

—— ——, *Marshal.*

Indorsed on the back of writ:

Fi. Fa.

A. & T. A. RICHARDS
v.
BROOK MACKALL, Jr. } 4117.

Damages, $897.42, with int. from 2d June, 1865, til- p'd, & co. costs, $18.85; ad. co., 1.70.

Nulla bona.

June 17th, '68.

D. S. GOODING, *Marshal.*

58 *Execution No.* 2.

In the Supreme Court of the District of Columbia, the 11th day of June, 1869.

ALFRED RICHARDS & THOMAS A. RICHARDS,
Plaintiffs,
v.
BROOK MACKALL, Jun., Defendant. } At Law. No. 4117.

The President of the United States to the marshal for said District, Greeting:

You are hereby commanded that of the goods and chattels, lands and tenements, of the defendant you cause to be made $897.42, which the plaintiff lately in said court in said suit recovered of said defendant for his damages, and further sum of $18.85 for his costs and charges by him about his suit expended, as appears of record, and return this writ into the clerk's office of said court within 60 days from the date hereof so indorsed as to show when and how you have executed the same.

59 Witness:

(Signed) D. K. CARTTER,
Chief Justice of said Court.

[Seal of Court.]

(Signed) R. J. MEIGS, *Clerk.*

K. & W.

By virtue of this writ I have caused to be made of the goods and chattels, &c., of the defendant $— and $— for his costs and charges, which I have deposited in the bank of — and delivered to the clerk a certificate of said deposit.

—— ——, *Marshal.*

Indorsement on the back of writ:

Fi. Fa.

A. & T. A. RICHARDS
v.
BROOK MACKALL, Jr. } 4117.

Damages, $897.42, with int. from 2nd June, 1865, til- p'd, & co. cost-, $18.85; ad. co., 3.40.

Levied, as per schedule, August 10th, 1869, & satisfied pl'ff's
60 att'y to the am't of $646.89 *dollars*. *Nulla bona* the balance.
June 13th '70.
(Signed) A. SHARP, *Marshal.*

Debt	$897 42
Int. from June 2nd, '65, to Sept. 2nd, '69	228 74
Cost	22 25
	$1,148 41
Marshal's fees	21 49
Int. from Sept. 2, '69, to June 6th, '70	32 00
	$1,201 90

Received of Alex'a Sharp, U. S. marshal D. C., 646.89 dollars on account of the execution.
June 13th, '70.
(Signed) KENNEDY & WEBB,
By W. B. WEBB, *Att'y for Pl'ff.*

61 EXHIBIT No. 7 to Original Bill. Filed April 11, 1882.

Exhibit No. 7.

United States Marshal's Sale.

In virtue of three writs of *fieri facias* and one writ of *venditioni exponas* issued from the clerk's office of the supreme court of the District of Columbia and to me directed, I will sell at public sale, for cash, in front of the court-house door of said District, on Monday, the 11th day of April, 1870, at 12 o'clock m., all defendant's right, title, claim, and interest in and to part of lot No. 7, in square No. 223, in the city of Washington, D. C., beginning at the northeast corner of said square and running thence south 44 feet; thence west to the west end of the lot; thence in a northerly direction with the west line thereof to the north line of said lot; thence with said north line to the place of beginning, together with all and singular the improvements thereon, seized and levied upon as the prop-
62 erty of Brooke Mackall, Jr., and will be sold to satisfy executions Nos. 3477, 3478, 4117, and 3708, in favor of Mathew G. Emory, George H. Plant, A. & T. F. Richard, and Owen & Wilson.

ALEX. SHARP,
U. S. Marshal D. C.

The above sale is postponed until Monday, the 16th day of May, 1870, at the same hour and place, by consent of all parties.

ALEX. SHARP,
U. S. Marshal D. C.

The above sale is further postponed until Monday, the 6th day of June, 1870, at the same hour and place, by consent of all parties.

ALEX. SHARP,
U. S. Marshal D. C.

The above sale is further postponed until Thursday, the 9th day of June, 1870, at same hour and place, for the want of bidders.

ALEX. SHARP,
U. S. Marshal D. C.

The above sale is further postponed until Monday next, the 13th instant, at the same hour and place, in consequence of the rain.

ALEX. SHARP,
U. S. Marshal D. C.

63 DISTRICT OF COLUMBIA, } *ss:*
Washington County, }

On this 17th day of December, A. D. 1878, before me, a notary public in and for the county and District aforesaid, personally appeared Crosby S. Noyes, one of the proprietors of the Evening Star Newspaper Company, who, being sworn according to law, did depose and say that the foregoing is a true copy of the original advertisement of the marshal's sale of part of lot No. 7, in square No. 223, with its continuances of postponements of sale, to the best of his knowledge and belief.

CROSBY S. NOYES.

Sworn and subscribed before me—
[SEAL.] JOHN T. C. CLARK,
Notary Public.

64 EXHIBIT No. 8 to Original Bill. Filed April 11, 1882.

Exhibit No. 8.

Alexander Sharp to Alfred Richards.

This indenture, made this seventh day of October, in the year of our Lord one thousand eight hundred and seventy, by and between Alexander Sharp, marshal of the District of Columbia, of the one part, and Alfred Richards, of the city of Washington, in the District of Columbia, of the other part, witnesseth:

Whereas, on the 26th day of February, in the year 1869, a certain writ of *fieri facias* did issue forth out of the supreme court of the District of Columbia, to the said marshal directed, reciting that whereas at, &c., a certain George H. Plant, by the judgment of the said court, recovered against a certain Brook Mackall, Jr., of the said city of Washington, the sum of one hundred and seventy-seven $\frac{78}{100}$ dollars and costs; and on the
65 same day another writ of *fieri facias* issued as aforesaid, to said marshal directed, reciting that Mathew G. Emory had recovered against the said Brook Mackall, Jr., another sum of one thousand and eighty-one $\frac{15}{100}$ dollars and costs; and on the 11th day of June, 1869, another writ of *fieri facias* issued as aforesaid, to said marshal directed, reciting that Alfred and T. A. Richards had recovered against the said Brook Mackall, Jr., the sum of eight hundred and ninety-seven $\frac{43}{100}$ dollars and costs, and the said marshal was, therefore, commanded that of the goods and chattels, lands and tenements, of the said Brooke Mackall, Jr., he should cause to be

made and levied the said several debts, damages, costs, and charges aforesaid, and that the said marshal should also have then and there this writ; and whereas, also, the said writs came to the hands of the said marshal, and in pursuance of the command therein con-
66 tained the said marshal laid the same upon a piece or parcel of ground of him, the said Brook Mackall, Jr., lying and being in the said city of Washington, and contained within the courses and distances following—that is to say: Part of lot numbered seven (7), in square numbered two hundred and twenty-three (223), beginning at the northeast corner of said square and running thence south forty-four (44) feet; thence westerly to the west end of the lot; thence in a northerly direction with the west line thereof to the north line of said lot; thence with said north line to the place of beginning; and whereas, also, after due notice being given of the same, the said marshal did, on the 13th day of June, 1870, expose the said piece or parcel of ground so as aforesaid taken in execution on the said several writs to public sale to the highest bidder, and the
67 hereinbefore-named Alfred Richards became the highest bidder and purchaser of the said piece or parcel of ground for the sum of two thousand and five hundred dollars, current money, and hath paid the said purchase-money to the said marshal, and is now desirous of obtaining a title to the said piece or parcel of ground in consequence thereof:

Now, this indenture witnesseth: That for and in consideration of the premises and of the sum of five dollars, current money of the United States, to the said Alexander Sharp, marshal as aforesaid, in hand paid at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, the said Alexander Sharp, sheriff as aforesaid, hath granted, bargained, and sold, and by these presents doth grant, bargain, and sell, unto him, the said Alfred Richards, his heirs and assigns, the said piece or parcel
68 of ground so as aforesaid taken and sold under the said several writs of *fieri facias* and hereinbefore particularly described, with the appurtenances, unto the said Alfred Richards, his heirs and assigns, forever, to the only proper and behoof of him, the said Alfred Richards, his heirs and assigns, forever.

In witness whereof the said Alexander Sharp, marshal as aforesaid, hath hereunto set his hand and affixed his seal the day and year first hereinbefore written.

(Signed) ALEXANDER SHARP, [SEAL.]
U. S. Marshal D. C.

Signed, sealed, and delivered in the presence of—
(Signed) CH'S McNAMEE.

DISTRICT OF COLUMBIA, } *To wit:*
County of Washington, }

I, Charles McNamee, a notary public in & for the county
69 and District aforesaid, do hereby certify that Alexander Sharp, marshal of the District of Columbia, party to a certain deed bearing date the seventh of October, 1870, and hereunto —, personally

appeared before me at my county aforesaid, he being personally well known to me to be the person who executed the said deed, and acknowledged the same to be his act and deed.

Given under my hand and seal this 7th day of October, 1870.

[NOTARIAL SEAL.] (Signed) CH. McNAMEE,
Not. Pub.

Recorded February 3rd, 1871, liber 639, folio 14.

70 EXHIBIT No. 9 to Original Bill. Filed April 11, 1882.

Exhibit No. 9.

This indenture, made this second day of April, in the year of our Lord one thousand eight hundred and seventy-three, by and between Brooke Mackall, Senior, and Martha Mackall, his wife, of the city of Washington, in the District of Columbia, of the first part, and Joseph B. Hill, of the same place, trustee as hereinafter set forth, of the second part, witnesseth:

That for and in consideration of the conveyance of even date herewith from Leonard Mackall and Francis Ann, his wife, and the said Brooke Mackall, Senior, to Martin F. Morris, as trustee, and, further, in consideration of the sum of three hundred dollars, lawful money of the United States, to the said Martha Mackall in hand paid by the party of the second part for and on behalf of the said Brooke Mackall, Senior, the
71 receipt whereof is hereby acknowledged, the said parties of the first part have granted, bargained, and sold, aliened, conveyed, and confirmed, and do by these presents grant, bargain, and sell, alien, convey, and confirm, unto the said Joseph B. Hill, the party of the second part, and to his heirs and assigns forever all the following-described tracts or parcels of ground and premises, to wit: Lot numbered seven (7), in square numbered two hundred and twenty-three (223), in the city of Washington and District of Columbia; to have and to hold the said several lots or parcels of ground, with all and singular the privileges and appurtenances to the same belonging, to the said Joseph B. Hill, his heirs and assigns, forever, in trust, nevertheless, for the uses and purposes following, and none other, to wit: To permit the said Brooke Mackall, Senior, his heirs and assigns, to hold, use, occupy, possess, and enjoy the
72 said premises, with the appurtenances, and the rents, issues, and profits thereof to take, receive, and apply to his own use and benefit, and in trust, further, to sell and convey said lots, pieces, or parcels of ground and premises, with the appurtenances, to such person or persons and for such sums of money and upon such terms of payment as said Brooke Mackall, Senior, or his heirs or assigns shall in writing direct, and with power and authority to encumber said real estate or any portion thereof by and of trust to secure the payment of money in such manner as said Brooke Mackall, Senior, or his heirs and assigns shall direct; and the said Martha Mackall hereby expressly and forever relinquishes all contingent right — dower in said premises or any part thereof.

In testimony whereof the said Brooke Mackall, Senior, and
73 Martha Mackall, his wife, have hereunto set their hands and affixed their seals the day and year first hereinbefore written.

(Signed) B. MACKALL, SEN'R. [SEAL.]
(Signed) MARTHA MACKALL. [SEAL.]

Signed, sealed, and delivered in the presence of—
(Signed) T. DRURY.

DISTRICT OF COLUMBIA, *County of Washington,* } *To wit:*

I, T. Drury, a justice of the peace in and for the county and District aforesaid, do hereby certify that Brooke Mackall, Senior, and Martha Mackall, his wife, parties to a certain deed, bearing date on the second day of April, in the year of our Lord one thousand eight hundred and seventy-three, and hereunto annexed, personally appeared before me, in my county and District aforesaid, the
74 said Brooke Mackall, Senior, and Martha Mackall, his wife, being personally well known to me to be the persons who executed the said deed, and the said Brooke Mackall, Senior, acknowledged the same to be his act and deed, and the said Martha Mackall, being by me examined privily, apart from her said husband, and having the said deed fully explained to her out of his presence, acknowledged the same to be her act and deed, and that she had signed, sealed, and delivered the same and did not wish to retract it.

Given under my hand and seal this 8th day of April, A. D., 1873.
(Signed) T. DRURY, *J. P.* [SEAL.]

Received for record September 29th, 1873, and recorded in liber No. 731, folio 171, *et seq.*, one of the land records in the District of Columbia, and examined by—
(Signed) S. WOLF, *Recorder.*

75 EXHIBIT No. 10 to Original Bill. Filed April 11, 1882.

Exhibit No. 10.

This indenture, made this thirteenth day of January, in the year of our Lord one thousand eight hundred and seventy-four, between Joseph B. Hill, as trustee and in his own right, and Brooke Mackall, Senior, of the first part, and Leonard Mackall, of the second part, all of the city of Washington, in the District of Columbia, witnesseth:

That the said parties of the first part, for and in consideration of the sum of ten dollars in lawful money of the United States to them in hand paid by the said party of the second part at and before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, and sold, aliened, enfeoffed, released, and conveyed, and do by these presents grant, bargain, and sell, alien, enfeoff, release, and confirm and con-
76 vey, to the said party of the second part and his heirs and assignees forever all that certain lot of land and premises in

the city of Washington and District of Columbia, and known and described as lot numbered seven (7), in square numbered two hundred and twenty-three (223), together with all the buildings, improvements, rights, privileges, appurtenances, and hereditaments to the same belonging or in any manner appertaining, and all remainders, reversions, rents, issues, and profits thereof now due or to become due; and all the estate, right, title, interest, and claim whatsoever, either at law or in equity, of the said parties of the first part and of each of them of, in, or to the said lot, piece, or parcel of land and premises, as hereinbefore mentioned and described:

To have and to hold the said lot, piece, or parcel of land and premises, with the appurtenances, unto the said party of the
77 second part, his heirs and assignees, forever, for his and their sole use, benefit, and behoof forever; in trust, nevertheless, for the uses and purposes following and none others—that is to say, to hold the same for the use and benefit of the aforesaid Brooke Mackall, Senior, and subject to his absolute control and disposal, and to sell and dispose of the same as the said Brooke Mackall, Senior, may in writing direct and require.

In testimony whereof the said parties of the first part have hereunto set their hands and affixed their seals the day and the year first hereinbefore written.

JOSEPH B. HILL. [SEAL.]
JOSEPH B. HILL, *Trustee.* [SEAL.]
B. MACKALL, SENIOR. [SEAL.]

Signed, sealed, and delivered in the presence of—
W. H. CRAIG.

78 DISTRICT OF COLUMBIA, } *ss:*
County of Washington, }

I, W. H. Craig, a justice of the peace in and for the county of Washington, in the District of Columbia aforesaid, do certify that Joseph B. Hill and Brooke Mackall, Senior, parties to a certain deed bearing date on the thirteenth day of January, A. D. 1874, and hereunto annexed, personally appeared before me, in the county and District aforesaid, the said Joseph B. Hill and Brooke Mackall, Senior, being personally well known to me to be the persons who executed the said deed, and acknowledged the same to be their act and deed.

Given under my hand and my seal this 15th day of January, A. D. 1874.

W. H. CRAIG, [SEAL.]
Justice of the Peace.

Received for record June 3rd, 1878, and recorded in liber No. 884, folio 310, *et seq.*, one of the land records for the District of Columbia, and examined by—

GEO. A. SHERIDAN, *Recorder.*

79 EXHIBIT No. 11 to Original Bill. Filed April 11, 1882.

Exhibit No. 11.

This indenture, made this twenty-seventh day of February, in the year of our Lord one thousand eight hundred and eighty, by and between Brooke Mackall, of Washington city, District of Columbia, of the first part, and Brooke Mackall, Junior, of the same place, of the second part, witnesseth:

That the said party of the first part, for and in consideration of services performed, moneys advanced, and five dollars in lawful money of the United States to him in hand paid by the said party of the second part, and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, enfeoffed, released, and conveyed, and doth by these presents grant, bargain, sell, alien, enfeoff, release, and convey, unto the party of the second part, his heirs and
80 assigns, forever the following-described real estate, to wit: All my right, title, and interest in and to all of that certain lot of land and premises in the city of Washington and District of Columbia *and* known and described as lot numbered seven (7), in square numbered two hundred and twenty-three (223), including my interest in a claim for mesne profits against Alfred Richards, for which a suit is now pending, * * * together with all the buildings, improvements, rights, privileges, appurtenances, and betterments to the same belonging or in any manner appertaining, and all the remainders, reversions, rents, issues, and profits thereof now due or to become due, and all the estate, right, title, interest, and claims whatever, either in law or in equity, of the said party of the first part of, in, to, or out of the said lot of land and premises, as hereinbefore mentioned and described; to have and to hold the said lot of
81 land and premises, with the appertenances, unto the said party of the second part, his heirs and assigns, forever, for *him* and their sole use, benefit, and behoof forever.

The said party of the first part also hereby requests and directs Leonard Mackall, trustee, to convey the legal title to the aforesaid lot and premises in the city of Washington, in the District of Columbia, to the said Brooke Mackall, Junior, of the second part, on his demand; and, further, that he, the said party of the first part, and his heirs shall and will at any and all times hereafter, upon the request and at the cost of the said party of the second part, his heirs or assigns, make and execute all such other deed or deeds or other assurance in law for the more certain and effectual conveyance of the said piece or parcel of land and premises and appertenances unto the said party of the second part, his heirs or assigns, as the said party of the second part, his heirs or assigns, or his counsel
82 learned in the law shall advise, devise, or require.

In testimony whereof the said party of the first part hath hereunto set his hand and affixed his seal on the day and year first hereinbefore written.

B. MACKALL. [SEAL.]

Signed, sealed, and delivered in the presence of—
W. WILLOUGHBY.
CHARLES WALTER.

DISTRICT OF COLUMBIA, *County of Washington,* } *To wit:*

I, Charles Walter, justice of the peace in and for the county and District aforesaid, do hereby certify that Brooke Mackall, party to a certain deed bearing date on the twenty-seventh day of February, A. D. 1880, and hereunto annexed, personally appeared be-
83 fore me, in my county and District aforesaid, the said Brooke Mackall, — personally well known to me to be the person who executed the said deed, and acknowledged the same to be his act and deed.

Given under my hand and seal this 27th day of February, A. D. 1880.

CHARLES WALTER. [SEAL.]

Received for record March 12th, 1880, and recorded in liber 936, folio 252, *et seq.*, of the land records of the District Columbia, and executed (examined) by—
GEORGE F. SCHAEFER (SCHAYER),
Dep. Recorder.

84 *Original Writ. Issued April* 11, 1882.

In the Supreme Court of the District of Columbia. April 11, 1882.

BROOKE MACKALL, Jr., Complainant, *against* A. RICHARDS *et al.*, Defendants. } No. 8118. Equity Docket 22.

The President of the United States to Alfred Richards and wife, A. Richards, Leonard Mackall, defendants:

You are hereby commanded to appear in this court at its first special term occurring twenty days after service of this subpœna and answer the exigency of the original bill under pain of attachment and such other process of contempt as the court shall award.

Witness D. K. Cartter, chief justice.

R. J. MEIGS,
Clerk, &c.,
By R. J. MEIGS, JR.,
Ass't Clerk.

85 Endorsement on back of writ:

S'p'a to Ans. Original.

BROOKE MACKALL, Jr., *vs.* ALFRED RICHARDS *et al.* } No. 8118. Equity Docket 22.

Issued April 11, 1882; returned April 20, 1882.
Summond all the defendants April 11th, 1882.
C. E. HENRY, *Marshal.*

86 *Answer of Alfred Richards and Wife to Original Bill. Filed June 6, 1882.*

In the Supreme Court of the District of Columbia, Holding a Special Term in Equity. In Equity.

BROOKE MACKALL, Jr.,
vs.
ALFRED RICHARDS and Mrs. A. RICHARDS, His Wife, and LEONARD MACKALL.
} No. 8118. Doc. 22.

To the honorable the supreme court of the District of Columbia, holding a special term in equity:

The joint and several answer of Alfred Richards and wife to the bill of complaint against them exhibited in the above-entitled cause, respectfully represents—

I. That it is true, as alleged, that they are citizens of the District of Columbia and residents of the said District.

II. That as far as they are informed they believe that it is true that the said lot seven (7), in square two hundred and twenty-three
87 (223), was purchased in the manner and from the parties as set forth in said bill.

III. That it is true, as alleged, that a conveyance of the said property was made by W. W. Corcoran to Brooke Mackall, Senior, of which Exhibit No. 2 is a copy; that the said Brooke Mackall, Senior, refused to pay an account for taxes claimed by the said Corcoran, for which reason the said Corcoran refused to deliver the conveyance for the property to the said Brooke Mackall, Sr.; that afterwards the said claim for taxes was paid by the present complainant, Brooke Mackall, Junior, who had in the meantime acquired a tax title to the said lot seven (7); that the deed from the said Corcoran to the said Mackall, Senior, was subsequently delivered in due form; that the delivery of the deed was made some time in the latter part of the year 1865, and was placed upon the land records of the
88 District of Columbia on the 29th day of September, 1873, all of which appears by reference to the proceedings in a case in this court in which the said Alfred Richards and others are complainants and the said Mackall, Jr,, and Mackall, Sr., and others are defendants, said cause being No. 2373, equity docket 11, of this court.

IV. That respondents are not informed whether the said Brooke Mackall, Sr., instituted the proceedings mentioned in the fourth paragraph of the bill, or whether said Exhibit No. 3 is a true copy thereof or not.

V. In answer to the fifth paragraph of the said bill respondents aver that the said Brooke Mackall, Sr., about the date mentioned in said bill, made a conveyance of the said property to Brooke Mackall, Jr., the present complainant; that in a deposition made by the said complainant, the said Brooke Mackall, Jr., in a cause depending in this court, made after the said last-mentioned date—that
89 is, after 1859—he stated under oath that a conveyance of the said property had been made to him by the said Brooke

Mackall, Sr., and that he had the deed in his possession and refused to produce it; that subsequently, in a proceeding in this court, in which the said Brooke Mackall, Jr., was plaintiff and W. B. Todd and others — defendants, being cause No. 1703, equity docket 9, the said Brooke Mackall, Jr., under oath alleges that he is the proprietor of said lot seven (7), square two hundred and twenty-three (223), and that if a title thereto should be acquired by the defendant, W. B. Todd, in execution of certain tax certificates in his, said Todd's, possession, a cloud would be created upon his, said Brooke Mackall Jr.'s, title to the said property, and that by reason of his, said Brooke Mackall Jr.'s, possession under the title acquired by him he could not contest the title so acquired by Todd, and prays the court to enjoin the execution and delivery of any deed under the said certificates; that afterwards, in another proceeding
90 instituted in this court, wherein the said complainant, the said Brooke Mackall, Jr., is plaintiff, and George H. Plant and others are defendants, said cause being No. —, equity docket —, of this court, the complainant, the said Brooke Mackall, Jr., again under oath avers that he is "equitably entitled to the whole of said lot, with the appurtenances, having received a parol gift of the same about ten years ago, under which gift he entered upon and took possession of the said lot;" that it is true, as alleged, that the said complainant did commence the erection of a building upon a portion of the said lot, but that it is not true that the said complainant expended large sums of money in and about the erection thereof, nor that the completion of said building was prevented in the manner as set out in the fifth paragraph of said bill; that it is true that the said George H. Plant and Mathew G. Emory instituted pro-
91 ceedings against the said property, and that Alfred and Thomas A. Richards obtained a judgment against the complainant, as set forth; that the said proceedings and judgment were based upon accounts for materials furnished in the erection of said building to the complainant, Brooke Mackall, Jr., upon the faith and credit of the representations made by him of his ownership of the said lot, and upon the further faith of the exhibition to Mathew G. Emory, one of said parties, of a deed from the said Brooke Mackall, Sr., to the said Brooke Mackall, Jr., conveying to him in absolute fee-simple the said lot of ground, as will appear from a reference to the proceedings in the said cause No. 2373, equity docket 11, of this court.

VI. That it is true that on the 13th of June, 1870, the marshal of the District of Columbia, under certain writs of execution in his hands, advertised and sold a portion of said lot seven (7), in
92 square two hundred and twenty-three (223), of which the said Alfred Richards became the purchaser for the sum in said sixth paragraph mentioned; that the same was afterwards conveyed by the marshal to said Richards, which deed is duly recorded among the land records of the District of Columbia; that the sale made by the marshal as aforesaid was in execution, among others, of two judgments recovered by the aforesaid Plant and Emory, respectively, in the proceedings by them instituted to enforce their

liens as mechanics and material men as against the said building erected by said Brooke Mackall, Jr., as aforesaid; that the said judgments were confessed by the said Brooke Mackall, Jr., with a stay of execution, and were not enforced till a long time after the said stay had expired, at the request and upon the promise of the said Brooke Mackall, Jr., that the said judgments should be satisfied,
93 and the sale under the said executions was postponed from time to time at the instance and request of the said complainant and upon his promise that the amount of said judgments should be paid.

VIII. That it is true that the proceeds of the sale were applied in manner as set out in the eighth paragraph of the bill, and that the executions were delivered and the conveyance made as alleged.

IX. That it is true that after the sale so aforesaid made to him, said Alfred Richards, by the marshal of the District of Columbia *that* he entered into possession of said portion of lot so sold to him, and has since continued in its possession; that at the time he took possession there was standing on said part of lot an incomplete building, upon which no work had been done for a long time and which was going to ruin for want of attention; that he completed the said building, built a fence along the north line of the said lot, so that the same could be used in connection with the
94 said building, and placed gates in the said fence, secured by a padlock; that he caused the said lot to be surveyed and subdivided, so as to show the part that was purchased by him, and has caused said subdivision to be duly recorded; that he has since the purchase thereof paid the taxes annually assessed against said property, has collected the rents arising from said house, and has at no time been interferred with in such possession by the said complainant or by any one in his behalf by any proceedings instituted for that purpose.

X. Respondents deny the several allegations contained in the tenth paragraph of the bill of complaint as to any promise on the part of Alfred Richards, with respect to said property, or any tender on the part of said Brooke Mackall, Jr., in manner as alleged in said bill; that it is true that at one time, with the hope that some settlement might be made of the matters in dispute,
95 that respondent, Alfred Richards, stated an account of the monies expended by him in and about the said property, and caused the same to be exhibited to the said Brooke Mackall, Jr., but respondents are satisfied that the said Brooke Mackall, Jr., the complainant, never intended to settle, and that he is and has been at all times unable to make any settlement, being, as respondents are informed and believe, insolvent in his circumstances, and that all pretended proffers on his part at all times, with respect to the said property and its redemption from the liens created thereon, have been for the purpose of encouraging litigation with a view more to the annoyance of respondents than to the assertion of any rights on his part to the said property and, as respondents believe, with a view to obtain money from the defendant, Alfred Richards; that, as far as respondents are informed and believe, the said several deeds men-

96 tioned in said paragraph ten have been made in manner as set forth, and that the suit mentioned was commenced and terminated in manner as set forth in the name of Leonard Mackall, but, as respondents believe, in the interest of the said complainant, Brooke Mackall, Jr., and that during the pendency of said suit Brooke Mackall, Senior, departed this life.

XII. That it is true, as alleged, that the said Brooke Mackall, Sr., on the 27th of February, 1880, executed and delivered to complainant the conveyance mentioned in said paragraph, and respondents are informed and believe that proceedings have been instituted in this court by parties interested in the estate of Brooke Mackall, Sr., to have the said deed set aside for fraud.

XIII. That it is true, as alleged, that the respondent, Alfred Richards, did institute in this court proceedings to cause the remaining portions of said lot seven (7), in square two hundred and
97 twenty-three (223), to be subjected to the payment of the amount still due upon the several judgments, but that it is not true that the decree passed in said cause ascertained that the said Brooke Mackall, Jr., had an equitable interest only in said property; but, to the contrary thereof, the said bill alleges that Brooke Mackall, Sr., acquired the title to the said lot, and afterwards sold and conveyed the same to Brooke Mackall, Jr.; that the said Brooke Mackall, Sr., never placed the conveyance to him of said lot upon the land records of the District of Columbia, and that the said Brooke Mackall, Jr., has never placed the deed to him from said Brooke Mackall, Sr., upon said land records, for the purpose of defrauding the said judgment creditors, and that at the time when the said bill was filed they still continued to keep the said conveyance concealed, so that parties interested therein might not be in-
98 formed in whom the title to the said lot was really vested, and that the decree passed by this court in the said cause and afterwards confirmed by the Supreme Court of the United States adjudges and decrees "that the title to the said real estate in the proceedings in the said cause particularly mentioned—that is to say, to all of lot numbered seven, in square two hundred and twenty-three, in the city of Washington, not heretofore sold by the marshal of the District of Columbia to the complainant, Alfred Richards—is vested in the defendant, Brooke Mackall, Jr.," and directs that the same be sold to pay said judgments, all of which will appear upon reference to said cause No. 2373, equity docket 11.

XIV. Respondents say that it is immaterial what amount of profits the said Richards has received on account of said property, and denies that there is any accountability on their parts to said complainant therefor.

99 XV. Respondents say that it is not true that the taxes assessed against the said property remain unpaid, and, on the contrary thereof, aver that the said Alfred Richards has paid the taxes assessed against the portion of the property so sold to him as aforesaid, and that as to the taxes that have accumulated upon the other portions of said lot respondents say that such taxes are, by the decree of this court directing such property to be sold, specifically

made a lien upon the proceeds of such sale, and that such taxes have accumulated by reason of the delay growing out of litigation instituted by the said complainant. Respondents further say that they are informed and believe that the complainant is in receipt of rents and profits arising out of improvements standing on the unsold portion of said lot.

XVI. Respondents deny that the said alleged sale of said
100 property by the marshal is invalid and void for *for* any or either of the reasons set forth in said paragraph, or that the purchase made by the said Alfred Richards was made at any sacrifice, or that he obtained any advantage by reason thereof, but, to the contrary thereof, respondents aver and charge that the said sale and the purchase thereunder was made in perfect good faith, and of right ought to be sustained in every particular; and, having fully answered the said bill, your respondents beg to be hence dismissed with their reasonable costs in that behalf, and so as in duty bound they will ever pray, &c.

ALFRED RICHARDS.

I do solemnly swear that I have read the answer by me subscribed and know the contents thereof, and that the facts therein stated upon my personal knowledge are true, and that the facts therein stated upon information and belief I believe to be true.

ALFRED RICHARDS.

101 Sworn and subscribed to before me this 7th day of June, A. D. 1882.

[SEAL.] HENRY R. ELLIOTT,
U. S. Comm'r for the Dist. of Col.

Answer of Leonard Mackall. Filed June 6, 1882.

In the Supreme Court of the District of Columbia, — day of ——, 1882. Equity.

BROOKE MACKALL, Jr. *vs.* A. RICHARDS *et al.* } No. —.

The answer of Leonard Mackall, one of the defendants in said cause, to the bill of complaint of the above-named plaintiff.

In answer to said bill of complaint I state as follows:

1, 2, 3, 4. That the statements embraced in the 1st, 2nd, 3rd, & 4th paragraphs are true.

In answer to paragraph No. 5 I say—

5. That the plaintiff, at a very early age, conceived the
102 purpose of defrauding his brothers and sisters out of their just interests and rights to the estate of their father, and by means of craftiness, deceit, and falseholds he succeeded in alienating his father from their mother and the rest of the family, and by means of hypocritical professions of filial devotion to his father and by threats and intimidations he succeeded in

establishing such controll over his father as to enable him to make his father do whatever he wished, and if Brooke Mackall, Senior, ever did promise to convey the said lot No. 7, in square 223, to the plaintiff, or to put him in possession of said lot and allowed him to hold himself out to the world as the legal or equitable owner thereof, it was under the fraudulent and malign influence aforesaid, and said promise was in no way binding upon the said Brooke Mackall, Senior, in his lifetime, either at law or in equity, nor upon his devisees or heirs-at-law since his death.

103 It is true that about the year 1859 a building was partially erected upon said lot, and I am informed that the plaintiff held himself out to the world and to contractors and to material men that he was the proprietor of the said building, and that he obtained credit with certain parties upon the faith of such representations. I believe it is also true that the U. S. Government did take possession of said premises and occupy them for a long time during the late war, and that the plaintiff made a claim against the Government in his own name for the rents of said premises, and that he did collect on account of said rents a large amount of money, which he fraudulently appropriated to his own use, because if his father assented to and permitted him to do so it was because he was afraid to resist the demands of the plaintiff. The plaintiff never put into said building or upon said property in any shape a dollar of his own, for he had no money or means save what

104 he obtained from his father. He pursued no business or employment, and for many years lived solely upon the bounty of his father. I admit that judgments at law, No-. 3478 and 3477, were obtained in the supreme court of the District of Columbia against the plaintiff, but I affirm that said judgments were obtained because the plaintiff had assumed before the world the liabilities which they sought to recover, and that the executions resulting from said judgments were levied upon lot No. 7, in square 223, because the plaintiff had erroneously stated that he was the owner of said property.

The defendant herein admits that on or about the 1st of October, 1867, the defendant- herein, Alfred Richards and —— Richards, recovered a judgment at law against the plaintiff for the sum stated.

I admit the truth of paragraphs 6, 7, 8, and 9 of said bill, and in answer to paragraph 10 of the same I say that I do not doubt but that the plaintiff endeavored to procure a release in his own

105 favor from the defendant Richards of the title which the said —— Richards holds to lot No. 7, in square 223, but I have been informed and believe the same to be true that the said —— Richards has informally declined relinquishing his said title to the plaintiff.

And, further answering paragraph 10, I admit that the matter alleged therein is true to the best of my knowledge and belief; and, further, admitting that judgment was rendered against me in the case in ejectment No. 19635, I affirm that I omitted to prosecute said case further because of the following facts, to wit: 1st, that the said judgment was corret; 2nd, because the within defendant was vested with, upon the death of the late Brooke Mackall, deceased,

the capacities of the executor of the last will & testament of said deceased, and because the said will, which was duly probated and recorded in the supreme court of the District of Columbia, refers to the same moieties of real estate that were embraced in the late deed of trust. In answer to paragraph 12 of the said bill I deny
106 that on the 27th day of February, 1880, or at any time the late Brooke Mackall, deceased, executed a deed of conveyance of his own free will and accord of the lot No. 7, in square 223, and of his interest in the suit in ejectment, which was then pending, of this defendant against the defendant herein, —— Richards, to the plaintiff, and I affim that on the 27th day of February, 1880, and for many days prior to the said date the late Brooke Mackall, deceased, was in such a condition of body and of mind as to have rendered him unable to execute a valid deed; and, in further answer to paragraph 12 of said bill, I admit that the part of lot No. 7, in square 223, held by Alfred Richards is worth forty thousand dollars. In answer to the 13th, 14th, & 15th paragraphs of said bill I state that, to the best of my knowledge and belief, the same are correct.

I admit the facts stated in the 16th paragraph of said bill to
107 be true, except the implied statement in the 8th subdivision of the said paragraph that the plaintiff had a verbal promise from the father for a conveyance of said lot No. 7, in square 223, to him, and say, if he had any such promise, it was obtained by fraud, intimidation, and coercion, and was not binding upon the said Brooke Mackall, deceased, in his lifetime, nor upon his legatees or heirs since his death; and I state that, as to the legal opinions, deductions, and conclusions embraced in said paragraph No. 16, I express no opinion.

I do solemnly swear that I have read the answer by me subscribed and know the contents thereof, and that the facts therein stated upon my personal knowledge are true, and that the facts therein stated upon information & belief I believe to be true.

LEONARD MACKALL.

ROBERT M. NEWTON,
S. S. HENKLE,
Counsel for Def't, Leonard Mackall.

Subscribed & sworn to before me June 6, 1882.

R. J. MEIGS, *Clerk,*
By M. A. CLANCY,
Ass't Clerk.

108 *Replication to Answer of A. Richards and Wife. Filed June* 17, 1882.

Supreme Court of the District of Columbia.

BROOKE MACKALL, Jr., *vs.* ALFRED RICHARDS *et al.* } Equity No. 8118.

The complainant hereby joins issue with the defendants, Alfred Richards & wife.

W. WILLOUGHBY,
Sol. for Complainant.

Replication to Answer of L. Mackall. Filed June 17, 1882.

Supreme Court of the District of Columbia.

BROOKE MACKALL, Jr., *vs.* ALFRED RICHARDS *et al.* } Equity No. 8118.

The complainant joins issue with the defendant, Leonard Mackall.

W. WILLOUGHBY,
Sol. for Complainant.

109 *Motion & Notice to Withdraw Replication as to Answer of L. Mackall. Filed Oct.* 13, 1882.

Supreme Court of the District of Columbia.

BROOKE MACKALL, Jr., *vs.* ALFRED RICHARDS *et al.* } Equity No. 8118.

And now comes the complainant and moves the court for leave to withdraw his replication as to the answer filed by Leonard Mackall, and that said answer may be stricken from the records of this case, & for such other relief as may be proper in the premises.

W. WILLOUGHBY,
Sol. for Complainant.

Take notice that at the opening of the court on Wednesday, the 11th inst., or as soon thereafter as counsel can be heard, I shall call up the above motion for the action of the court thereon.

W. WILLOUGHBY,
Sol. for Complainant.

To. R. M. Newton, Esq., sol. for Leonard Mackall.

110 *Order of Court Upon Above Motion.*

Application overruled.
Oct. 13, 1882.

A. B. HAGNER,
Asso. Justice.

Testimony on Behalf of Complainant in Chief. Filed Oct. 24, 1882.

In the Supreme Court of the District of Columbia. In Equity.

BROOKE MACKALL, Jr., *vs.* ALFRED RICHARDS *et al.* } No. 8118.

Evidence on behalf of the complainant, Brooke Mackall, Jr., in support of his bill of complaint.

Witnesses.	Direct.	Cross.	Redirect.	Recross.
	pp.	pp.	pp.	pp.
Mackall, Brooke, Jr.	2–5.	5–20.	20–22.	—
	—	23–81.	—	—

Exhibits referred to at pages in this deposition:

No. 1, page 1.
" 2, " 12.
" 3, " 12.
" 4, " 22.
" 5, " 22.

111 In the Supreme Court of the District of Columbia. In Equity.

BROOKE MACKALL, Junior,
v.
ALFRED RICHARDS *et al.* } No. 8118.

Be it remembered that at an examination of witnesses begun and held on the 5th day of October, A. D. 1882, and continued from time to time until the 23rd day of October, A. D. 1882, when the within depositions were taken, I, Lorenzo A. Bailey, an examiner in chancery, did cause to be personally present at the office of W. Willoughby, Esq., No. 456 Louisiana avenue, in the city of Washington, in the District of Columbia, Brooke Mackall, Junior, to testify on the part and behalf of the complainant in a certain cause now depending in the supreme court of the District of Columbia, wherein the said Brooke Mackall, Junior, is complainant and Alfred Richards and others are defendants.

(Signed) LORENZO A. BAILEY,
Examiner in Chancery.

112 *Evidence on Behalf of the Complainant, Brooke Mackall, Jr., in Support of his Bill of Complaint Filed in the Above-Entitled Cause.*

In the Supreme Court of the District of Columbia. In Equity.

BROOKE MACKALL, Jr.,
vs.
ALFRED RICHARDS *et al.* } No. 8118.

Testimony-in-chief.

WASHINGTON, D. C., THURSDAY, *October* 5, 1882.

Met, pursuant to notice and agreement between counsel, at the office of W. Willoughby, Esq., 456 Louisiana avenue, at 2.30 o'clock p. m.

Present: W. Willoughby, Esq., counsel for complainant, Brooke Mackall, Jr.; W. B. Webb, Esq., counsel for defendant, Alfred Richards; R. M. Newton, Esq., of counsel for defendant, Leonard Mackall.

Mr. Willoughby offers in evidence the bill and decrees in the case of Brooke Mackall *vs.* W. S. Nichols, in equity, No. 1112, in the supreme court of the District of Columbia.

113 It is agreed between counsel that copies of said bill and decrees, to be made by the examiner, may be filed in place of the originals, and accordingly the examiner has made such copies, and the same are hereto attached and marked "Exhibit B. M. No. 1.

BROOKE MACKALL, Jr., a witness of lawful age, produced and sworn on behalf of the complainant, deposes and says:

By Mr. WILLOUGHBY:

Q. Are you the complainant in this case of Brooke Mackall, Jr., *vs.* Alfred Richards and others?

A. I am.

Q. What was your father's name?

A. Brooke Mackall, Senior.

Q. Was he in the occupation of lot 7 in square 223, in this city?

A. Yes, sir.

Q. At what time did such occupation commence?

A. Shortly after he purchased the property of W. W. Corco-
114 ran and Wm. S. Nichols, trustees—at least I was so informed.

Q. What connection did you have with the property?

A. I managed it for him. I can't tell exactly when I commenced to manage it. On or about the year, I think, 1859, he gave me the property by verbal promise, and said that at some future time he would give me a conveyance of it.

Q. What did you do upon the property?

A. I erected or started to erect a building now on it called the Palace Market, after first clearing away some old frame buildings on the place and grading the lot.

Q. To what extent did you make improvements?

A. Several thousand dollars. The indebtedness that I had incurred in one way or another in the erection of the building I think was in the neighborhood of $8,000.00 or $10,000.00; I can't remember exactly. The Government had taken possession of the property next to the building, and when I had carried the building up to
115 the third story and part of the third story I was ordered to stop, on the grounds that, in consequence of the Government having the adjoining property, on which the Government had erected a large building, which was then occupied by a large number of clerks settling up the paymasters' accounts of the entire army, the building might catch fire and burn up the important papers of the Government. The order was a verbal one, and was, in substance, that I would not be allowed to go any further with the building. This was during the war. I can't give the exact date just now. The indebtedness to Plant, Richards and Emory arose out of the erection of this building. The Government would not allow me to go any further, and the Government had taken possession of the part of the lot adjoining the building and then had possession. The building fronts on New York avenue. I remained in possession of the building after the war up to the time that Mr. Richards took for-
116 cible possession. It was some little while after the sale—not

a great while after the marshal's sale. The building was fastened up and locked. I passed there shortly after Mr. Richards took possession and found some men at work. I enquired what they were doing there. Mr. Richards appeared and said he had taken possession of the building and was going to finish it, and when he got his money out of it he would turn it over to me. He obtained possession without my knowledge or consent and without the knowledge or consent of my father, so far as I know. The part occupied by the building and a small place for a yard south of the building, enclosed by a fence, was the part he took possession of. He has had possession of that part ever since. Since then the amount of his judgment has been tendered to him. I hold in my hand a statement of the tender made to Mr. Richards by my father in my presence and in presence of Mr. Fendall E. Alexander.

(Mr. Webb objects to any reference to the statement re-
117 ferred to by the witness, unless it be referred to only to refresh his memory.)

(Witness continuing:) More than the amount of the judgment against my father, together with all the expenses and costs of all kinds, was tendered to Mr. Richards by my father in legal-tender notes—he was careful to have them such—in my presence and in the presence of Mr. Fendall E. Alexander. This tender was made in August, 1873. I refer to the judgment which was obtained in October, 1867, against my father and myself for the same amount which is described in the bill, he being indorser upon the note. Mr. Richards declined to accept the money. A conveyance of this property was made by my father to me a short time before his death. My father died March 7th, 1880. The date of the deed was February 27, 1880.

Cross-examination by Mr. WEBB:

Q. When did you take possession of the lot on the corner
118 of New York avenue and Fourteenth street?

A. To the best of my recollection, it was in 1859.

Q. Was this after or before your father promised that he would give you the lot?

A. My impression is that I had possession, as his agent, before he made this verbal promise.

Q. Can't you give me something a little more definite than an impression on this subject?

A. I might, on some reflection. I think I can give it to you during this examination.

Q. How soon after you took possession of this lot did you commence to build the house on it?

A. I didn't commence to build a house until some time in 1864.

Q. How was the lot occupied during the period between 1859, when you took possession of it, and the time when you commenced to build?

A. There were some old carpenter shops on it. One had just been converted into a livery stable by the tenant. They both fronted on New York avenue.

119 Q. Who received the rent of the buildings that were on the lot prior to 1864?

A. Not a great while after I had control of it one carpenter shop and the livery stable were removed, and notice having been given that the property was below the grade and it would have to be filled up to prevent stagnant water from being there—the foundation for Cook's new bank on 15th street was then being dug, and as this was a short haul for them they deposited the earth on this lot to bring it to the grade.

(Question repeated by Mr. Webb.)

A. Father received those rents up to the time, in 1859, when father gave me the property; I received them afterwards.

Q When did the U. S. Government erect the building for the use of the paymaster's department, which you say was on the lot before you commenced to build?

A. I can't tell the exact date; it was some time before I started the building now known as the Palace Market.

120 Q. Did the Government pay rent for its occupation of that property; and, if so, to whom was it paid?

A. It was paid to me.

Q. Did you account to your father for it?

A. I did not, because he gave it to me.

Q. Did you build that building as your father's agent?

A. I did not; I built it under the verbal promise that he had given me.

Q. Did you give any of the parties who furnished labor and materials, etc., upon that building to understand that your father had promised that lot to you?

A. I do not think I did to anybody.

Q. Did you tell them that you were your father's agent in the matter?

A. I certainly did not.

Q. Do you recollect how long it was after you commenced the building before you received orders to stop the building?

A. I can't tell the exact date.

Q. Was the building carried up rapidly or slowly?

A. It was built ordinarily rapidly—brick laid by the thou-

121 sand, carpenter's work by the day.

Q. What height had it obtained when it was stopped?

A. Two stories had been erected and part of the third, beside the cellar.

Q. Did you receive any intimation that the Government did not wish to have any building there before you received the order you mention?

A. Before I started the building, thinking there might be some trouble in building a building so near a Government building, I enquired, directly or indirectly, of the paymaster at that time whether I could use the ground left outside the Government enclosure to erect a building upon it. I was informed there was no objection. After I got the building up to part of the third story I was informed

that the paymaster general had no authority to give me such permission.

Q. Who gave you the order to stop the erection of the building?

A. I think he was either the superintendent of the adjoining building built and occupied by the Government or a messenger there.

122

Q. Did he tell you that the paymaster had no right to give you permission to build there?

A. That is my recollection of it.

Q. Did the messenger say whom it emanated from—this order?

A. The Secretary of War or acting Secretary—I don't know which.

Q. Did you go to the Secretary about it or take any steps to find out whether the order was an authentic one?

A. At that time it was almost impossible to get an audience with the Secretary or Assistant Secretary. At the time I had no reason to doubt the statement made by this party and felt satisfied that such an order had been issued at that time.

Q. Then you did not go to the Secretary of War, but stopped the building at once?

A. That is my recollection.

Q. When were the buildings that were erected by the paymaster's department removed?

A. I dont recollect; but it was a long time after the building was stopped and after the close of the war.

123

Q. In the meantime was anything done upon the building?

A. Nothing except to secure the building as best I could from the weather and prevent anybody from getting into the building.

Q. After the buildings erected by the paymaster's office were removed did you take any steps to complete the building?

A. I think not.

Q. Did your father do anything towards the completion of that building?

A. No, sir.

Q. Did your agency for your father continue after that time?

A. No, sir; nor for a long time before that.

Q. Did your father ever do anything towards completing the gift to you of this property except the execution of this deed that you testify to?

A. He gave me possession under the verbal promise and I went on and made the improvements.

Q. Is that all he did?

A. All that I recollect just now.

124

Q. Did you ever call his attention to the gift afterwards and ask him to complete it?

A. I don't recollect that I did; I don't consider that necessary.

Q. Why didn't you consider it necessary?

A. Because he had given me the promise that he would make the deed to me at the proper time.

Q. Did you consider that your title to that lot was sufficient without any further execution of that promise?

A. I don't understand that question completely.

(Mr. Webb says, in explanation of the question, that he means to ask whether upon the face of that promise the witness considered himself proprietor of the lot so as to authorize him to expend money upon it and to exercise other acts of ownership.)

A. I considered the property mine except the formal transfer by deed.

125 Q. Did your father ever offer to make you a transfer by deed of this property?

A. Not that I now recollect, except the deed that he executed during his sickness?

Q. Was that the deed of 1880?

A. Yes, sir.

Q. When he made you that deed did he tell you that it was in fulfil-ment of that promise?

A. He didn't in so many words, but that was about the substance.

Q. That was part of the consideration for making that deed?

A. I presume so.

Q. At the time that your father made that deed was he perfectly capable of making a deed?

A. He was, sir.

Q. And you mean to say that at that time he carried into effect the promise he made to you in 1859?

A. I do.

It is agreed between counsel that all the pleadings and decrees in equity cause No. 2373, Richards *et al. vs.* Mackall *et al.*, may
126 be read in evidence in this cause.

Mr. Willoughby offers in evidence the two certificates of the collector of taxes, and the same are hereto attached, marked, respectively, "Exhibit B. M. No. 2," and "Exhibit B. M. No. 3."

Adjourned to meet at this place at 2 o'clock p. m. on Friday, October 6, 1882.

(Signed) LORENZO A. BAILEY,
Exam'r in Chancery.

WASHINGTON, D. C., FRIDAY, *October* 6, 1882.

Met pursuant to adjournment.

Present: Respective counsel.

Adjourned to meet at this place on Saturday, October 7, 1882, at 2 o'clock p. m.

(Signed) LORENZO A. BAILEY,
Exam'r in Chancery.

WASHINGTON, D. C., SATURDAY, *October* 7, 1882.

Met pursuant to adjournment.

Present: W. Willoughby, Esq., counsel for complainant;
127 W. B. Webb, Esq., counsel for defendant A. Richards; R M. Newton, counsel for defendant Leonard Mackall.

Cross-examination of the witness, BROOKE MACKALL, Jr., resumed:

By Mr. WEBB:

Q. Did you ever receive a deed to the property in question from any source other than that given by your father just before he died; and if so, from what source?

(Objected to by Mr. Willoughby as not proper evidence as proof of the deed; the deed, if any, should be produced.)

A. I received a deed from the old corporation of Washington—the mayor. I forget the date. It was a tax-deed.

Q. Was that deed ever recorded?

A. It was not.

Q. Why not?

128 A. The attorney who examined the matter informed me that the whole thing was defective and void. I kept the deed with some other papers which were lost.

Q. Was it your design when you obtained that deed to place it upon record if you should be satisfied that the sale under which it was made was a good one?

(Objected to by Mr. Willoughby as immaterial.)

A. At the time I looked upon it as a mere formal matter—not attaching much importance to it. It was a mere settlement of account for some back taxes which Mr. Corcoran had claimed and which his agent, Mr. Anthony Hyde, had a tax certificate for, and, as I paid it, he made the formal transfer, on which I got the tax-deed.

Q. Was it necessary for the settlement of that account of taxes that you should take a deed from the corporation, under Mr. Hyde's assignment, and the certificate?

129 A. I didn't think it necessary, but as I had the certificate and paid the money, I thought I might as well get a deed for it; but if I knew as much then as I did afterward I wouldn't have gone to the expense of a deed.

Q. Have you ever set up that deed as evidence of your title to the lot in question in any matter relating thereto?

(Objected to by Mr. Willoughby as not the best evidence.)

A. I believe it was introduced with other papers in a claim that I had against the Government for rent upon the property.

Q. You say "believe;" don't you know that fact?

A. Yes; I know that fact.

Q. Was your father aware of the fact that you obtained this deed from the corporation, and of the further fact that it was used by you to sustain your claim for rent in the property?

A. Yes, sir.

Q. Did you receive from your father any compensation for your services as his agent or manager of his business from 1859?

130 A. Well, I always before received a support from my father—no regular salary—up to the time that I commenced to operate for myself.

Q. When did you commence to operate for yourself?
A. Some time in 1859.
Q. In what business did you then engage?
A. I was commencing to learn real estate matters.
Q. Then, the operations you speak of were operations in real estate?
A. Yes, sir.
Q. Have you been engaged in business as a real estate agent or operator in real estate since 1859?
A. More or less; yes, sir.
Q. Did you have any capital furnished you to carry on that business; and, if so, by whom?
A. I borrowed some money from an uncle of mine and from other parties at different times.
Q. Have your transactions in real estate been large?
A. No, sir; I should not say very large.

Q. Have you continued to be engaged in that business
131 down to the present time?
A. Yes, sir.

(Mr. Webb, counsel for defendant Richards, gives notice that he will introduce in evidence a copy of the tax-deed referred to by the witness who has testified that the original has been lost.)

Q. After you went into possession of this lot was a sewer constructed along 14th street?
A. Yes, sir.
Q. Did you institute proceedings in the supreme court of the District of Columbia to restrain the issue of certificates by the corporation of Washington on account of that sewer?

(Objected to by Mr. Willoughby as not the best evidence.)

A. I instituted proceedings to prevent a deed from being issued under a tax certificate which had been issued by the corporation for laying the 14th-street sewer and for paving.

132 (Mr. Webb gives notice that he will produce and file the proceedings in the cause referred to by the witness.)

Q. Did you institute proceedings in the supreme court of the District of Columbia to restrain the marshal of the District from selling this lot under executions in hands issued upon the judgments recovered by Plant, Emory, and others?
A. Yes, sir.

(Mr. Webb, counsel for defendant Richards, gives notice that he will produce and file the proceedings in the cause last above referred to by the witness.)

Q. Were you examined as a witness in the divorce suit of Mackall *vs.* Mackall, in the supreme court of the District of Columbia?
A. I was.
Q. Were you asked any question, in the course of that examina-

tion, with respect to the title to the lot in controversy, and
133 particularly as to whether you had or had not received a deed from your father to the said lot?

(Objected to by Mr. Willoughby on the ground that it is not matter of cross-examination and not the best evidence.)

A. I was.

Q. Can you tell us now what that testimony was?

A. I answered three hundred and eighty-nine cross-questions, which I believe was the number. I testified as follows:

"Q. Has your father given you any other property besides part of lot 7, in square 252?

"A. In lieu of my appropriating the G-street lot to the family debts father gave me the lot on the corner of New York avenue and 14th street; this was about the time I appropriated the G-street lot to family debts.

"Q. Have you any conveyance from your father of the lot
134 on the corner of New York avenue and 14th street?

"A. My impression is that I have.

"Q. Has it been recorded?

"A. I do not know.

"Q. Then you think the conveyance is in your possession?

"A. My impression is it is.

"Q. Will you please produce that deed and exhibit it to the commissioner, Mr. Woodward?

"A. I will not.

"Q. Can you state from memory on or about the date of that conveyance?

"A. I cannot just now.

"Q. Can you say within one, two, or three years of how long ago it was?

"A. I do not recollect exactly the time.

"Q. Was it a year ago?

"A. My impression — nothing like a year ago.

"Q. Was it before you commenced constructing improvements on it?

"A. My impression is it was since."

The cross-examination of this witness by Mr. Webb was here closed.

135 Redirect by Mr. WILLOUGHBY:

Q. You may give your explanation of that testimony.

A. I was at that time (referring to the above-quoted testimony in the divorce suit of Mackall *vs.* Mackall) quite young, and had been on the witness stand for a long time, and had answered three hundred and eighty-nine cross-interrogatories in said suit and was a good deal confused. At that time a deed had been given of a number of lots, and at the time I had an impression that a deed for this lot might be among the deeds and other papers which my father had given me to take care of, but which deeds, etc., I did not then

know the contents of; but I subsequently examined such deeds, etc., and found that I was mistaken and that, in fact, no such deed or conveyance of said property was made to me.

Q. In the negotiations with Mr. Hyde what was said, if any-
136 thing, about a deed being given to you by Mr. Corcoran instead of to your father?

A. After I had settled the account for the back taxes that had been pending for some time, and the certificate was assigned to me by Mr. Hyde, my father having given me the property in 1859 and had promised to give me a deed at some future time, father requested Mr. Corcoran through Mr. Hyde that, in lieu of making the deed to him of the property, that he, Mr. Corcoran, join my father in a deed conveying the property to me, which proposition was considered by Mr. Corcoran and finally rejected by him on the ground that such a long time had elapsed between the purchase and the time spoken of there might be some complications about it, and fearing something of the kind Mr. Corcoran declined to execute the deed to me as requested by father, but afterwards mailed to him (my father) the deed executed by him (Mr. Corcoran) many years before to my
137 father. I think all this was done through me. I think, but am not sure, father may have been present once or twice at these negotiations. I think Mr. Hyde may have been aware that my father had given me the lot and intended to make a deed to me of it.

Q. Has there occurred to you since you were examined day before yesterday any other acts of your father showing an intention that this property should become yours? If so, state what they were.

A. I hold in my hand two wills executed by my father in his own handwriting, one dated the 5th day of August, 1870, and witnessed by three witnesses, and the other dated the 29th day of July, 1876, also witnessed by three witnesses, in both of which he gave me all his property.

Q. When and how did you get possession of those wills?

A. He gave them to me directly after they were executed, so that I should have them in case any accident should happen to him.

138 (It is agreed between counsel that copies of these wills may be made by the examiner and filed with this deposition, and true copies thereof have accordingly been made by the examiner and are hereto attached, marked "Exhibit B. M. No. 4" and "Exhibit B. M. No. 5.")

Redirect closed; no recross desired.

(Mr. R. M. Newton, of counsel for defendant Leonard Mackall, being about to cross-examine the witness, Mr. Willoughby, counsel for complainant, objects to the cross-examination by counsel for Leonard Mackall as to the matters which have been testified to, on the ground that Leonard Mackall has no interest in such matters in this suit.)

Cross-examination by Mr. NEWTON:

Q. What was your age at the time of the alleged gift to you by your father of lot 7, in square 223, in this city?

139 A. About twenty-three years of age.

Q. How long, or about how long, had you managed this property before the alleged gift of the same by your father to you?

A. I can't now tell exactly; some months, I presume.

Q. Are you quite sure that it was not longer than the period just stated?

A. It may have been.

Q. Have you no means of refreshing your memory upon that point?

A. None.

Q. What improvements were on this lot when you began to manage it?

A. Two old frame carpenter shops.

Q. And what else—was there not a livery stable?

A. I have stated that one of the carpenter shops was converted into a livery stable.

Q. From the time that you became manager of this property to the commencement of the erection of the Palace Market on the same were there any rents from it; and, if so, what disposition was made of them by you?

140 A. Shortly after father gave me the property, in 1859, and put me in possession of it, both the old frame buildings were torn down because the authorities had notified me that the property was below the grade. It was then graded by several hundred loads of earth being put upon it, and it was vacant for some time. I recollect that there was once a circus exhibited upon it, and then a temporary frame building erected on lease, which were all the improvements put upon it until the Government took possession of it, after which I built upon it the building now known as the Palace Market. There were rents received from the frame building and from the circus and from the Government, the amounts of which I do not remember. I used the money to pay taxes, make repairs, and to support my father and myself, among other matters.

Q. Did not this period embrace the whole time from 1859 to 1864?

141 (Objected to by Mr. Willoughby, and counsel for complainant objects as to any further cross-examination by counsel for Leonard Mackall upon the ground heretofore stated, and advises the witness to decline to answer, unless required to do so by the court.)

The witness declines to answer the question, and the matter is hereby reported by the examiner to the court.

(Signed) LORENZO A. BAILEY,
Examiner in Chancery.

Adjourned subject to call.

(Signed) LORENZO A. BAILEY,
Examiner in Chancery.

WASHINGTON, D. C., FRIDAY, *October* 13, 1882.

Met, pursuant to agreement between counsel, at 2 o'clock p. m., at the office of Mr. Willoughby, 456 Louisiana avenue.

Present: W. Willoughby, Esq., counsel for complainant; Robert M. Newton, Esq., of counsel for defendant, Leonard Mackall.

142 The court having overruled the motion on file for leave to withdraw the replication and strike out the answer of Leonard Mackall, counsel for complainant withdraws his objection to the further cross-examination by counsel for defendant, Leonard Mackall, of the witness Brooke Mackall, Jr.

And thereupon was resumed the cross-examination of the witness BROOKE MACKALL, Jr.

By Mr. NEWTON:

Q. Did not your father collect the rents on lot 7, square 223, during the whole of the above-stated period—that is, from 1859 to 1864?

A. No, sir.

Q. Did you not state to a question of Mr. Webb upon this point that your father received the rents prior to 1864?

A. No, sir; I don't think I made any such statement.

Q. Was not the building on the northeast corner of the lot

143 7, known as the Palace Market, begun in 1864?

A. Yes, sir.

Q. During what year did the Government take possession of a part of lot 7, and state what portion or portions of that lot was so occupied by the Government.

A. I cannot tell the exact date when the Government took possession of a part of lot 7, in square 223, but can only say that it was some months before I started what is known as the Palace Market building; all of lot 7 was occupied by the Government, except the part occupied by the Palace Market building and a small portion occupied by a temporary frame building on the southwest corner of the lot.

Q. What do you mean when you state that you used the rents from the frame building and from the circus and from the Government to pay taxes, makes repairs, and support your father, when you have already stated that your father received these rents?

A. What I meant by my answer to Mr. Webb's question

144 in relation to certain rents collected from two carpenter shops, one of which was afterwards converted into a livery stable, was that father received the rent from those buildings up to within a short time before they were torn down—some time in 1859—when he gave the property to me. I did not mean that he received any other rents from that property. When I referred to the circus and other rents and the rents I had received from the Government also, that I had used that to support my father, pay taxes, etc., I meant only those from the two frame buildings, as received by my father; the others were mine. In order that there may be no misunderstanding in regard to my answer to this question, I wish to be un-

derstood as follows: Father received no rents from this property after the gift to me from him, which was some time in 1859.

Q. Do you mean now to state that your father did not receive rent in anywise arising from the lot 7, square 223, prior to 1864?

145 A. Yes, sir.

Q. You state that you used the money referred to above in part to support your father and yourself; was it not a fact that your father was supporting himself and you at this time?

A. As he had given me the property and put me in possession of it, I considered the property mine, and the rents to be mine, which I used, together with other incomes from other sources, to support my father, as well as myself, to pay taxes, etc.

(Mr. Newton, counsel for defendant, Leonard Mackall, gives notice that he will put in evidence the family Bible of the late Brooke Mackall, deceased, to show the following facts: First, that in 1859, the time of the alleged gift of lot 7 by the decedent to the complainant, the complainant was only nineteen years of age; and, secondly, to exhibit upon the record the age of the decedent at that

146 time and the ages of the several children, exclusive of the complainant, dependent upon the decedent for present support and future provision.)

Q. At what place in the city of Washington was your father residing during the year 1859, and who were the members of his household?

A. He was living on Pennsylvania avenue between 19th and 20th streets northwest. All of his family resided there except my brother Leonard, who was sometimes away.

Q. Did your father not have at this time a large and expensive family?

A. Yes, sir.

Q. Was not your father of a speculative turn and disposition of mind?

A. I think not.

Q. Do you really think that at this time, as the head of a family growing up around him, that he desired to devest himself of the right to improve for the benefit of his family this lot 7, square 223?

A. I mean to say that he intended to do what he did do,

147 which was to give me this property, and that I was to control it as I saw fit.

Q. State by name the children who were at this time dependent upon your father for support and future provision.

(Mr. Willoughby, counsel for complainant, objects to the question, first, as immaterial, and, second, as implying that the witness could be competent to state how much children could be dependent for future support.)

A. I do not understand what you mean by future support, but at that time, to the best of my recollection, all of the children except my brother Leonard and myself were supported by him. These

children, except my brother Leonard and myself, were Lillie, Covington, Louise, Benjamin, Barton, and Carrie and Helen and Katherine, now Mrs. Robert Christy.

Q. Were not three of these children young ladies in society
148 at this time, and were there not several children ranging in age from two years to fourteen year-, inclusively?

A. My recollection is that one of them was grown, possibly one or two more. I cannot now tell what their ages were at that time?

Q. If your father meant to give you this property, or to permit you to control it, why did he not make a deed of conveyance or a deed of trust of the same to you?

A. He could not have given me a deed of the property at that time for the reason that, although he had bought and paid for the property, yet the property had not been deeded to him.

Adjourned to meet at this place on Thursday, October 19, 1882, at 9 o'clock a. m.

(Signed) LORENZO A. BAILEY,
Examiner in Chancery.

WASHINGTON, D. C., THURSDAY, *October* 19, 1882.

Met pursuant to adjournment.

149 Present: W. Willoughby, Esq., counsel for complainant; R. M. Newton, Esq., of counsel for defendant, Leonard Mackall.

Mr. Willoughby, counsel for complainant, gives notice that he shall insist upon the enforcement of equity rule 64, as amended June 4, 1878, and Mr. Willoughby does object to all testimony introduced for the purpose of sustaining the allegations in the so-called answer of Leonard Mackall, one of the defendants in this cause.

Mr. Newton, of counsel for defendant, Leonard Mackall, refers to the fact, and asks that it be put on record, that the cross-examination of the complainant is proceeding regularly under the issue joined between complainant and the defendant, Leonard Mackall.

Cross-examination of BROOKE MACKALL, Jr., resumed by Mr. NEWTON:

(Mr. Newton refers to Exhibit No. 2 filed by complainant
150 in this cause to show that the one-half part of lot 7 was deeded to decedent on the 1st day of March, 1852, by W. W. Corcoran, and gives notice that he will put in evidence printed copy of record in case at law No. 19,635, of Leonard Mackall, trustee, *vs.* Alfred Richards, to show that title was made final of the other half of said lot in the decedent on the 6th day of November, 1856, by a decree of the equity court of the District of Columbia, and Mr. Newton requests the examiner to enter such reference and notice on the record.)

Q. Was not the building which you have stated was on the southwest corner of lot 7 at the time the Government occupied the same on the southeast corner of the lot and facing 14th street?

A. Yes.

Q. Were these rents collected from the building you previously stated was on the southwest corner of the lot from 1859 to 1864, and did you collect them?

151 A. The building on the southeast corner of the lot was not erected until 1863. I collected the rent; first the ground rent and afterwards the rent of the building.

Q. You collected also rents from the building which you have stated previously was on the southwest corner of the lot from 1859 to 1864, or did you not?

A. I do not recollect that I stated there was a building on the southwest corner of the lot. There was no building on the southwest portion, except a woodshed and water-closets, which belonged to the building fronting on 14th street, on the southeast corner.

Q. Were there ground rents collected from this lot from 1859 to 1864?

A. There was.

Q. Can you state with reasonable certainty the annual income from ground rents upon said lot during that period of time?

A. I cannot, as I kept no account of them.

Q. Did your father or yourself collect these ground rents?

A. I collected them.

152 Q. You have stated that you started to erect the Palace Market after clearing away some old frame buildings on the place. Were not these buildings on the lot up to the time of the commencement of the market building?

A. The carpenter shops heretofore alluded to were not, but the building—frame building—on the southeast portion of the lot was.

Q. When were those buildings, then, that you have stated were cleared away taken from the lot?

A. A short time before I graded the lot by order of the authorities the two old carpenter shops were removed, which was a very short time before the Government took possession of the greater portion of the property.

Q. What was your business pursuit from 1859 to 1864?

A. About three months in 1859 I was in New Albany, Indiana, in the firm—employed by the firm—of Culberson and McCord, after which I returned home, at the request of my father, and

153 assisted him in his matters, and also attended to my own matters.

Q. Did you have any business exclusively of your own after your return from Indiana during the period above stated?

A. I do not now recollect that I attended to any matters of business except for myself and father.

Q. If you had a business of your own at this time please state what it was.

A. I meant, when I said "business," anything that pertained to my private affairs.

Q. What was your father's business from 1859 to 1864?

A. My father was a $1,600 clerk in the 1st Comptroller's office of the Treasury Department in 1859 down to the time that President

Grant was elected President, shortly after which he was removed from office.

Q. Was your father ever a broker doing business in this city?

A. Yes, sir; some years before he went into the Treasury Department.

Q. You have stated that you improved lot 7 to the extent
154 of several thousand dollars; of what did these improvements consist?

A. In grading the lot, adding to the frame building on the southeast portion, and in the erection of the brick building now known as the Palace Market.

Q. Did any portion of these expenses come in the form of local taxes or special improvement taxes?

A. No, sir; I forgot to say that I also paid some taxes due on lot 7, square 223, at various times; a portion of them were special taxes.

Q. Have you not a convenient way of forgetting something?

(Objected to by Mr. Willoughby as insulting to the witness.)

A. I decline to answer such an impertinent question.

Q. You have stated that you were at expense of eight or ten thousand dollars in the erection of the Palace Market building; was this money paid in cash during the progress of the building?

A. I stated that I incurred indebtedness on account of the
155 erection of the Palace Market building between eight and ten thousand dollars, a portion of which was paid in cash.

Q. Who made—who contracted to build the Palace Market?

A. There was no contract; the bricks were laid by the thousand; the carpentering work by the day.

Q. Do I understand you to say that there was no contract in writing for the erection of this building made to any one who had a hand in the erection of it?

A. I may have had a written agreement with the boss bricklayer as to the laying of the brick and with the boss carpenter as to what I was to pay him and his men per day.

Q. Can you produce those several contracts?

A. I cannot. I don't say there were such agreements, but there may have been.

Q. Can you state with reasonable certainty the amount of that sum of eight or ten thousand dollars which was paid in cash?

A. I cannot, as I kept no book account. I paid cash for all
156 work and a portion of the materials. I can't tell how much I paid in cash for materials—that is, all work done on the building.

Q. State, as nearly as you can, the sources upon which you relied for the cash and for the general obligation embraced in the erection of this building.

A. I borrowed the money that I paid in cash, and relied in some measure on the rents of the building when completed to pay the balance or a portion of the balance.

Q. Please state if you gave any real estate security for any loan contracted for this building.

A. I gave deeds of trust on some lots located in the southwest portion of the city.

Q. Will you produce those deeds of trust or certified copies of the same?

A. No.

Q. Were certain lots, the property of your father, on G street, in this city, sold to one Mr. Stinemetz and to one Mr. King for cash during the erection of the Palace Market building?

A. I do not recollect now the time when those lots were sold
157 to Mr. King and Mr. Stinemetz, but the lots that I alluded to were in the neighborhood of the Observatory.

Q. What legal titular connection did you have to this lot at this time?

(Witness asks an explanation of the question.)

Q. What legal title did you have to this lot from 1859 to 1864?

A. I didn't have a legal title; I had an equitable title.

Q. Were you collecting the rents arising from all of your father's real estate in Washington and Georgetown from 1859 to 1864?

A. I don't now recollect of any rents that he had in Georgetown or Washington except the rent from the old High-street house in Georgetown, the other property being vacant.

Q. How long after the Government took possession of lot 7 did it begin to build the building used as the Paymaster General's Department?

A. Immediately.

158 Q. Did the Government take possession of the whole of lot number 7 at the time of its occupation of the same?

A. No, sir.

Q. Was the building erected by the Government occupied by the same when you started to build the Palace Market?

A. No, sir.

Q. Was the conception of building the Palace Market a conception of your father's or your own?

A. Of my own.

Q. Can you state how long or about how long you had been engaged upon this building when the Government ordered you to stop?

A. I cannot. I think several months.

Q. Had you received any order to stop before the building had reached the third story or a part of the third story?

A. No, sir.

Q. Are you certain that grounds of the order from the Government to you to stop this building consisted in its fear of you setting fire to the building—the Paymaster General's Department?

159 A. I understood that was the principal objection at the time to the building being completed.

Q. Did the walls of these two buildings touch?

A. No.

Q. Did you assume any obligation in writing to Thomas A. Richards, of the firm of Alfred and T. A. Richards, in connection with the erection of the Palace Market; and, if so, what was it?

A. I bought some brick from the firm of A. & T. A. Richards and gave them my note.

Q. Was this note that you have reference to made after you had received orders to stop work on the building?

A. I do not now recollect.

Q. Was this note you refer to the note on which suit at law was brought by Alfred Richards and Thomas A. Richards against you, embraced in Exhibit No. 6 in this cause?

A. Yes, sir; it was.

Q. Please state again, as near as you can, the date of the order to stop from the Government to you?

160 A. I have no means now of fixing that date.

Q. Did you not state, in response to a question of your counsel in this suit, that this order to stop the building was received during the war?

A. I think I did.

Q. If you owned the lot 7 at the time of the execution of the note referred to why did you not give your own individual note directly to Mr. Richards and have it endorsed by your father?

A. I don't understand that question. I presume the note was given in the proper way.

Q. Did you not state to your counsel in this cause that the judgment of Richards was against your father and yourself?

A. Yes, sir; the judgment was obtained against me as maker and my father as endorser; two separate judgments.

(Mr. Newton, counsel for L. Mackall, refers to the Exhibit No. 6
161 to the bill in this cause filed by complainant to show, first, that the basis of the judgment of Richards, No. 4117, against the complainant was a note executed by Brooke Mackall, Jr., to his father, and endorsed by his father, to the plaintiff in said suit; second, that the suit instituted was against Brooke Mackall, Junior, as the only defendant, and that judgment and execution were — accordingly; and, third, that the agreement filed in that suit by Brooke Mackall, Jr., to confess judgment was a request to the clerk to enter judgment for the defendant, and Mr. Newton requests the examiner to enter such reference upon the record.)

Q. Please inspect the request to the clerk in Exhibit No. 6 to the bill in this cause. Did you sign the original of which this purports to be a copy?

A. I signed the request referred to.

Q. Explain why you requested the clerk to enter judgment for the defendant instead of for the plaintiff.

162 A. There must be some clerical error, either in the original or in the copy. I think possibly it was in the original.

Q. When was a tender made by your father to Mr. Richards of the amount of the judgment and costs of his suit against you?

A. Mr. Webb put that question and I answered it, and I refer to my answer to him, as I at that time had the paper before me.

Q. Was not this tender made after Richards had possession of the property?

A. I think it was.

Q. Please state the connection between the judgment obtained by Richards against you in 1867 and this lot.

(Objected to by Mr. Willoughby.)

Adjourned to meet at this place on Friday, October 20, 1882, at 9 o'clock a. m.

(Signed) LORENZO A. BAILEY,
Examiner in Chancery.

WASHINGTON, D. C., FRIDAY, *October* 20, 1882.

Met pursuant to adjournment.

Present: Respective counsel.

163 At the request of Mr. Newton and by agreement of counsel the hearing was postponed until 1 o'clock p. m. this day.

Met at 1 o'clock p. m., pursuant to postponement.

Present: W. Willoughby, Esq., counsel for complainant, Brooke Mackall, Jr.; A. M. Newton, Esq., of counsel for defendant, Leonard Mackall.

Whereupon was resumed the cross-examination of the witness, BROOKE MACKALL, Jr.

By Mr. NEWTON:

Q. I repeat the last question put to you at the preceding session, viz: Please state the connection between the judgment obtained by Richards against you in 1867 and this lot.

(Objected to by Mr. Willoughby on the ground that it is asking the witness a question of law.)

A. Being advised by Judge Willoughby, my counsel, that
164 this is a question of law, I decline to answer.

Mr. NEWTON: "Mr. Newton, of counsel for defendant, Leonard Mackall, refers to the exhibits to the bill filed in this cause, Nos. 4, 5, and 6, to show, first, that the suits of Emory, No. 3477, of Plant, No. 3478, were filed January 19, 1867; that notice had been filed by plaintiffs in each case, before filing said suits, of their intention to hold a lien on the northern section of lot 7 and upon the building thereon, in pursuance of the act of Congress entitled 'An act for the enforcement of mechanics' liens on buildings, etc., in the District of Columbia,' approved February 2, 1859; secondly, that the suit of Richards, No. 4117, was filed September 10, 1867; that the executions in the three cases referred to were issued on the same day, to wit, on the 17th day of April, 1868; that the executions in the cases of Emory and of Plant were specially directed to part of lot 7,
165 square 223, in pursuance to the mechanics' lien referred to; that the first executions in the three cases were returned *nulla bona;* that the second executions in the three cases were returned on the same day, to wit, June 13, 1870; that the executions in the cases of Emory and of Plant were endorsed 'satisfied;' that that in

the case of Richards, being for the full amount of $1,201.90, including costs, was indorsed as follows: 'Satisfied as to the $646.89; *nulla bona* the balance;' and Mr. Newton requests the examiner to enter the same on the record."

(Mr. Willoughby objects to and protests against the foregoing statement of counsel for Leonard Mackall being entered on the record, and insists on the examination of the witness proceeding, or that he be allowed to close.)

(Mr. Newton suggests that the summary from the exhibits to the bill the defendant has a right to on *on* cross-examination of complainant.)

166 Q. Did the Government pay any damages for having stopped you in erecting the Palace Market building?

A. No, sir.

Q. Has the Government paid any rent for the use and occupation of the lot 7?

A. Yes, sir.

Q. Was it paid to you or your father?

A. To me.

Q. Was the money paid at one time and in one amount or at different times and in several sums?

A. It was paid at two different times.

Q. What was the aggregate amount paid?

A. I do not now recollect exactly.

Q. Is it really a fact that by searching your memory you can't recall the amount?

A. I meant simply to say that I can't state the exact amount, but to the best of my recollection the first payment was between $6,000 and $7,000; the second amount was between $2,000 and $3,000.

167 Q. Was there any other indebtedness incurred by you to Alfred Richards in addition to the amount embraced in the suit hereinbefore referred to?

A. No, sir.

Q. Do you not state in the bill filed in this cause that there is other indebtedness claimed by Alfred Richards and others against you?

(Objected to by Mr. Willoughby, as the bill speaks for itself.)

A. I meant to say that I did not owe Mr. Richards at the time I gave him the note for anything but the amount of the note. I understand that since he took possession of the building that he purchased the claim or judgment of Francis Wheatley against me for lumber furnished for the building, part of which was used in the building.

Mr. NEWTON: "Mr. Newton gives notice that he will introduce ——."

168 Mr. WILLOUGHBY (interjecting): "Counsel for complainant protests against counsel giving notice of what evidence he intends to produce hereafter, and insists that he shall produce his evidence in the proper way."

Mr. NEWTON: "Mr. Newton submits the question of his right to introduce record evidence by way of reference and for future production to the court for its decision."

Mr. WILLOUGHBY: "Counsel for complainant now demands that the counsel for Leonard Mackall proceed with the cross-examination of the witness, and if he refuses to proceed counsel for complainant shall consider the evidence closed and propose to the witness to sign his deposition."

Mr. NEWTON: "Mr. Newton, considering the question of his right now in issue between counsel for complainant and himself, as counsel for defendant, L. Mackall, as a question open for the decision of the court, proceeds to continue the cross-examination."

Q. In incurring the indebtedness incident to the erection of the building upon lot 7 and other expenses referred to, did you
169 consider yourself acting as manager for your father or proprietor of the lot No. 7?

(Objected to by Mr. Willoughby as having been already answered.)

A. As owner of lot No. 7.

Q. You have stated that your father gave you this lot and put you in possession. What method of investiture have you reference to in saying that he put you in possession?

A. I meant exactly what I said; that he gave me the lot and put me in possession.

Q. Is the deed of February 27, 1880, the only act of ratification of the alleged gift of said lot made in 1859, upon which you rely to give title to this lot?

(Objected to by Mr. Willoughby as having been before answered.)

A. No, sir.

Q. Please state what other deed, if any, you have to that lot?

A. I had a defective tax-deed, which was lost.

170 Q. Was not the parol gift you state was made in 1859 for love and affection?

A. Partly for that. I should have said that was part of the consideration.

Q. Did you not consider that during the period from 1859 to 1864 the consideration of the alleged gift had been perfected upon your part?

A. I don't understand that question.

Q. How can you discriminate between the consideration as to its respective parts you allege as the basis of this gift when you claim it to be a mixed consideration—that is, a good consideration and a valuable consideration?

A. You will have to explain that; I don't understand that question.

Q. Please examine Exhibit No. 11 to the bill in this cause and explain the meaning of the asterisks in the body of the same.

A. Those asterisks, or stars, indicate that there was other property included in that deed which did not relate to this case.

171 Q. Did your father promise you also, in *in* the year 1859, to make you a deed of conveyance of all his real estate which he might own at any future time in the district of Columbia?

A. If I understand the question, I should say "No."

Q. Who were present at the time of the alleged execution of the deed of February 27, 1880?

A. Judge W. Willoughby, 'Squire Walter, and myself

Q. Who wrote that deed?

A. The deed was written by a Mr. McCorkle, or I should say copied by him, from a deed that had been drawn at my father's request and submitted to Judge Willoughby.

Q. What was the residence of this gentleman?

A. He roomed in the same house that my father and I roomed at, No. 339 C street, northwest.

Q. Will you produce that deed?

A. I will if my counsel directs me to.

Q. Are you not willing that it shall see the light of day without suggestion of counsel?

172 A. I am, but as my counsel has the management of this case I do not consider that I have a right to do anything without his advice.

Q. Was this deed signed in your presence?

A. It was.

Q. When was your father taken with his last illness?

A. Some time in December, I think, 1879.

Q. What was his age at that time?

A. I think in his 80th year.

Q. What was the character of his sickness?

A. It seemed to commence from indigestion.

Q. Can't you, as an eye-witness of his condition when he signed or is alleged to have signed the deed in question, state more definitely the character of his illness?

A. I can't understand your question.

Q. Did you nurse your father during his illness?

A. I did.

Q. Can't you tell from the character of the medicine given him something of the nature, more definitely, of his illness?

A. If Mr. Newton will tell me what he wants me to say I will endeavor to do it.

173 Q. Did your father suffer much during his illness?

A. At times he suffered very much.

Q. When did your father die?

A. I think on the 7th of March, 1880.

Q. Had he not been ill, all told, forty-eight days when the deed of February 28, 1880, was executed?

A. He may have been; I can't now tell without reflection the exact number of days he was sick.

Q. Did you occupy the same room with him during the period of his illness?

A. If you mean by "occupy" that I stayed in his room all the

time and had a bed there, I say no, but I was there waiting on him a greater portion of the time—hardly had time for sufficient sleep.

Q. I mean, did you occupy the same room with him in the plain, common-sense, every-day use of the word "occupy?"

A. I have answered that.

Q. Did your father occupy the same room from the first day of his illness to his death?

174 A. He did not.

Q. At what house in this city—street and number—did your father die?

A. No. 339 C street northwest.

Q. On what floor of that house did his death occur?

A. Second-story, front room.

Q. On what floor was his room when he was taken sick?

A. Second-story, back building.

Q. How long after his sickness began was it that he was removed?

A. I cannot tell exactly, but, without reflection, I think he was removed from one room to another about six weeks before he died—possibly more.

Q. Who were present when he was removed?

A. I think two colored men and myself. The removal was made at the suggestion of his physician, because the room he was first in was very noisy and not so cheerful as the one he was moved to.

Q. What was the character of the room from — he was removed, in respect of size and appurten-ces for comfort?

175 A. The room he first occupied was larger than the one he last occupied, but the ceiling was much lower, and, being immediately over the kitchen, it was very noisy and was in no way to by compared with the room he last occupied, all things considered. The last room had a cheerful south front, and the noise from the stone pavement on 4½ street was not so great, and it was regarded as one of the best rooms in the house.

Q. Did your father see many visitors of his intimate friends during his illness?

A. He had very few what may be termed intimate friends. He was a man who kept very much to himself and those who happened to be immediately around him. His preacher, Mr. Naylor, formerly of the Metropolitan church, where he attended, was a friend of his, and a man whom he thought a great deal of. Mr. Naylor paid him two quite long visits before his death, and saw him alone during both visits. He talked and prayed with him.

Q. Of what denomination of religion was the church which

176 your father attended when in health?

A. Dr. Naylor's church, generally known as the Metropolitan.

Q. What minister officiated at the funeral?

A. Dr. Addison, on account of the absence from the city of Mr. Naylor, who would have preached the funeral service had he been in the city, as father held him in high esteem and visited his family.

Q. Did your father see during his illness the defendant, Leonard Mackall, often?

A. He did, at the commencement of his sickness, see him for a while, but on account of Leonard's behavior in various ways he was requested repeatedly not to come in his room, and finally was almost ordered out of the room by my father; also on account of his behavior while under the influence of liquor, which had been obtained for father, and on account of his giving the medicine improperly, especially on one occasion when he gave him a tablespoonful of a powerful opiate when a teaspoonful was con-
177 sidered a very powerful dose. The doctor had to be called in hurriedly; coffee and various appliances were resorted to to relieve him from the effects of the opiate in time to save his life. The doctor said he felt it his duty to say that he would have to cease visiting my father unless Leonard ceased to have anything to do with the nursing, and a professional nurse was put in charge of the case. Through the kindness of a friend a professional nurse was engaged for him, and, together with another professional nurse, took charge of him and remained with him until he was buried. They helped carry his corpse out of the house.

(Mr. Newton objects to the answer just given upon the ground of total irrelevancy and of scandal.)

Q. Did your father see any one of his daughters often during his illness; and, if so, which of them?

A. He saw Mrs. Christy; how many times, I don't recollect. Mrs. Owens he also saw; how many times, I don't recollect. He
178 also saw his daughter-in-law, Leonard's wife. Those were the only daughters and daughters-in-law that he had.

Q. Did you ever have the door of the room of your father, by order, closed to visits of any one who might feel anxious to know his condition?

A. Everything that was done—every order given—was done at my father's request.

Q. Did you not have great influence with your father during his life?

A. It would be a most extraordinary thing if a child, the only one of ten, who had stood by him in all his troubles, would not have had influence over him when the balance of his children arrayed themselves against him and treated him in the most unnatural and outrageous manner, and during all his sicknesses during twenty years they took apparently no interest in him. They took the side of their mother from 1859 and before, and in the divorce suit between him and my mother testified against him, as the record will
179 show, in the most unnatural manner. Leonard especially was insulting and defiant, and stated, among other things which were false, that his father had, to his knowledge, been whipping his wife for seventeen years. He also, on one occasion, threatened his father that if he attempted to correct him that blood would flow. I think I had some influence.

Mr. NEWTON: "Counsel for defendant, Leonard Mackall, objects to the answer upon the ground of his previous objection."

Q. Do you remember ever a harsh word to have passed from your lips or an unreasonable request towards your father by yourself during your life?

A. Not that I remember.

Q. Did not your father state to you, during some time in the early state of his illness, that you had treated him worse than all of his children put together?

(Mr. Willoughby objects to all of this testimony as improper and irrelevant.)

180 A. Father had been sick about a week or ten days. I stayed by him day and night; nobody except the people in the house called to inquire about him. He was sitting up in a chair feeling very much better and I was sitting at a table in the same room writing; my brother Leonard came into the room. After talking to father a while and asked him some questions as to what he was taking, he, my brother Leonard, became very personal towards me. I asked him if he didn't think it was bad taste for him to come into the room occupied by my father and myself and find fault and say unkind things to one, and the only one, who had taken any interest and had performed the part of a child to a parent when he and the other children care- nothing for him and had, with a few rare exceptions, in twenty years never noticed him. Father said, "What is this, Brooke, you have been saying about me?" I asked him what he meant. He said, "It is a matter that has hurt my feelings very much;" which was that he had been told
181 that I had spoken of him as being in his dotage, and was about to marry a certain lady. I said, "That is false; I never said anything of the kind nor dreamed of such a thing." I asked him who told him so. I said whoever told him so lied. My brother Leonard spoke up and said, "You said so in my presence." I said, "When and where?" He replied, "In the presence of my mother." I said to him, "You have caught yourself—I say that father was going to marry when mother was alive!" Turning to father I said, "Were it not for the pending suit against Richards, where something is expected to be realized, there would be none of this pretended friendship and affection and this attempt to make mischief by lying and make- representations secretly to you." My brother'- conduct was so outrageous, and fearing that it might affect father's sickness, I told him that if he could — listen to such things that I had better get another room until he was in a condition to listen to such things, which I immediately did. After being
182 out of the room a day or two, I was notified by the doctor that Leonard was not fit to nurse him, and that I must go back in the room, disagreeable or not, and see that everything was done as he directed. From the conduct of my brother, his wife, and one or more of my sisters, and Mrs. Scott, a cousin, it was evident to others in my house as well as myself that my brothers and sisters intended to drive me out of my father's room, to substitute another doctor in my father's physician's place, and to take entire charge of him and prevent my having anything to do with him.

Adjourned to meet at this place at 9 o'clock a. m., on Monday, October 23, 1882.

(Signed) LORENZO A. BAILEY,
Examiner in Chancery.

WASHINGTON, D. C., MONDAY, *October* 23, 1882.

Met pursuant to adjournment.

Present: W. Willoughby, Esq., counsel for complainant,
183 Brooke Mackall, Jr.; R. M. Newton, Esq., of counsel for defendant, Leonard Mackall.

Before resuming the cross-examination, Gen. S. S. Henkle, of counsel for defendant, Leonard Mackall, appeared and requested that his appearance be entered upon the record, which is accordingly done, after which Gen'l Henkle left the room.

Cross-examination of the witness, BROOKE MACKALL, Jr., resumed.

By Mr. NEWTON:

Q. You have stated that you managed the property known at lot No. 7, embraced in Exhibit No. 11 to the bill. You managed the other real estate of your father in Washington and Georgetown, did you?

A. I did as long as he owned it.

Q. His ownership of this property embraced from the period of 1859 to his death, did it not?

A. No, sir.

Q. What do I understand you to mean by stating that you
184 managed the property as long as he owned it? Have you reference to any alienation of the property, or of any part of the property, to yourself?

A. I mean to be understood that what is known as the property in Georgetown, which father owned many years ago, nearly all of which he only had a tax title for, he said to me some time before I had bought it at tax sale that he had bought this property at tax sale, with the exception of one or two lots, I think, and that he had been paying taxes on it for so many years, and if I would pay the taxes on it that were then due, which was quite a large amount, that he would give me the property, which he did, and turned the property *the property* over to me, and advised me instead of paying the taxes direct to buy the property at tax sale, as a title from the corporation might be of advantage to me, as it might cure any defect in the tax title which he held, as the tax sales in those days were
185 not as strictly carried out as they were at the time that I bought at tax sale. I bought the property, as he had suggested, at tax sale, paid the money, took a deed, and he turned over the possession of the property to me. He gave me a lot in Washington, on G street, between 13th and 14th streets northwest, which was afterwards sold, one part to B. H. Stinemetz and another part to Mr. King. In lieu of my agreeing to appropriate this lot or the greater portion of it to debts contracted for the family, he gave

me as part of the consideration for the gift to me of lot 7, square 223. The lots in the first ward, which father had purchased from Charles W. Pairo and others, he made the first payment on some time before the balance became due. He said that if I would pay the balance of the purchase-money he would give me the property. I paid the balance of the purchase-money, he gave me the property, and he joined with Charles W. Pairo and others in a deed to me. Father said that he had paid the taxes on the Georgetown lots for so many years and he regarded it as so much money thrown away,
186 and I might make something out of them, otherwise he would let them go for taxes, but he thought if there was anything to be made out of it he preferred that I should make it instead of any stranger. In regard to the first ward lots he was induced to buy them, as they were represented to him as being very cheap, and that he could make quite a speculation out of them. He found out they were anything but a speculation, and that I some day might realize something out of them.

Q. During what period of time did all of this negotiation occur?

A. Between 1859 and the date of the deeds, which speak for themselves.

Q. Were those deeds recorded?

A. They were.

Q. Was the closing up of this negotiation effected before the institution of the suit in the supreme court of the District of Columbia for divorce, Martha Mackall against Brooke Mackall?

A. I don't recollect the dates, but the records speak for themselves.

Q. Please try, from your long experience and connection
187 and intimate knowledge of business connected with real estate of your father from 1859 to the day of his death, to refresh your memory upon questions with which you have such an intimate acquaintance.

A. My father owned no real estate nor had he any business for any one to look after at his death or up to his death. As I kept no book account of my own transactions, I am compelled to rely upon the records for dates.

Q. Is it possible that your memory betrays you upon the subject as to the date thereof, in its commencement, of the suit of your mother for divorce?

A. I mean to state that, as I kept no memoranda and no book account of these transactions, I have to rely in a great measure upon the records for these dates.

Q. You collected all available issues and profits in the form of rent and otherwise arising from this property during the time of your return from Indiana, in 1859, to the date of the death of your father?

A. I did; and, as I have heretofore stated, the property was
188 almost entirely unimproved property and produced little or no rents.

Q. Did you not testify in the divorce suit of Martha Mackall against Brooke Mackall to the effect that the exclusive considera-

tion of the alleged gift of lot 7 to you was the fact of the appropriation by you of G-street property for family debts?

A. I think I stated that the appropriation of the G-street lot to family debts was a consideration for the gift of lot 7, square 223, but I have no recollection that I used the word "exclusively," and do not think I did.

Q. Did you modify the force of your oath upon that occasion by any reservation as applied to the consideration of the gift of lot 7 to you? Did you not state substantially that the consideration of the alleged gift in question was the fact of your appropriation of G-street property to family debts? Answer.

(Mr. Willoughby objects to all this testimony; but the last questions, as to what the witness testified to on a former occasion, which is a matter of record, is objected to because it is not the best
189 evidence; that it is not fair treatment of a witness.)

A. I have endeavored to state the facts. The record must speak for itself as to what I stated in the divorce suit; not having it before me, I do not recollect my statement on that occasion.

Q. Please state, if you remember the same, the aggregate rental per year collected by you from the old High-street house, in Georgetown.

A. I cannot now.

Q. Did it rent by the month or by the year, as a general thing.

A. It rented by the month. For a short time some rent would be received, and for a long time little or no rent. Being an old building and very much out of repair, I didn't get enough rent from it to pay the taxes and necessary repairs. The greater portion of the time it was vacant.

Q. Is that property embraced in the alleged deed of February 27, 1880?

A. It is; and the other Georgetown property is also embraced in it, as well as some other lots in the first ward which I owned for many years.

190 Q. Who was the physician who attended your father during his last illness?

A. Dr. Ralph Walsh, who lives and has his office on C street between 3rd & 4½ street- northwest.

Q. You have previously stated that upon a certain day during the early part of your father's illness your brother Leonard gave your father a tablespoonful of a powerful opiate instead of a teaspoonful, which is a very powerful dose. Was not this medicine regularly prescribed, or had it not been regularly used for relief to your father?

A. The dose of a *tea*-spoonful instead of a teaspoonful which had been directed to be given to my father by Dr. Walsh took place just before the professional nurse was employed and put in charge of my father to nurse him, and was one of the reasons why the professional nurse was employed, at the suggestion of the doctor. This medicine was presented by Dr. Walsh to be used with great care, a

teaspoonful being a proper dose; a tablespoonful would be
191 fatal unless the proper remedies should be supplied with- half
an hour, as I was informed at the time by Dr. Walsh as well as by the druggist.

Q. Was not your brother Leonard, during the first weak or two weaks of your father's illness, a daily visitor to the house?

A. I believe he was.

Q. Who nursed your father during the first two weaks of his illness?

A. I first nursed him entirely, after which my brother assisted in the nursing for a short time.

Q. Had you given the medicine referred to to your father during the first period of your nursing him?

A. I gave my father all the medicines presented by Dr. Walsh up to the time that my brother assisted in nursing him. I do not recollect that I ever gave him the opiate that was prescribed during his sickness by the doctor to relieve his pain.

Q. Have you not stated already that your father at times suffered very much?

192 A. I have; but towards the latter part of his sickness he suffered very little, and he thought, and we all thought, that he was getting well, especially the last week.

Q. Did not your father indicate much physical suffering by groans during his last illness?

A. At the commencement—about the middle of his sickness—but not towards the last.

Q. Dr. Walsh attended him until his death, did he not?

A. Yes, sir.

Q. In statement which you made previously of your brother Leonard having given an overdose of a powerful opiate to your father, do you mean to state or intimate that he had a design on the life of your father?

(Objected to by Mr. Willoughby, as this is not a criminal court and Leonard is not on trial for an attempt to murder.)

A. I mean to state that that was one of the reasons why
193 Dr. Walsh insisted upon a professional nurse being put in
charge of the case, as Leonard's conduct before that, in administering medicines, showed that the instructions of the physicians was not carried out and that he was incompetent to nurse. The doctor said he would not risk his professional reputation any further in the case; and, as it was a physical impossibility for me to do the nursing, that a professional nurse must at once be put in charge of the patient or that he would decline to make another professional visit.

Q. Did Dr. Walsh state to you that Leonard Mackall designed to take the life of his father?

A. He did not.

Q. What reasons, as represented in their manner and surroundings, had you for supposing that your sisters and your cousin, Mrs. Scott, your brother Leonard and his wife intended to drive you out

of your father's room to take entire charge of him and pre-
194 vent you from having anything to do with him upon the occasion stated?

A. From their whole behavior, both what they said and did from first to last during the entire sickness, not only in my presence, but in the presence of others in the house.

Q. Could they have carried out such a purpose without using force and violence, and do you not consider that such a statement is the result of imagination and baseless as to common sense and reason?

A. At the proper time, when others then in the house saw and heard the unheard-of conduct of Mrs. Scott, one of my sisters, at least directly, the other indirectly, and more especially my brother Leonard, I shall more than substantiate the statement I have made.

(Mr. Newton objects to the answer as calling upon testimony the sources of which are in contemplation of law and equity not connected with this case.)

195 (Witness desires to make this statement in this connection: "That my two sisters, Mrs. Christy and Mrs. Owens; Mrs. Leonard Mackall, my sister-in-law, Leonard's wife; my brothers, Leonard and Dunbarton; Dr. Owens, my brother-in-law, Mrs. Owens' husband, saw my father, and the only child, Benjamin, who was not in the city, but in the far West, who did not have every opportunity, on accouut of his absence from the city, of seeing his father. I wish simply to have it appear on the record that all of his family had every opportunity to see my father whenever desired during his entire sickness; also all his relations and friends who did call and sent word to father they desired to see him saw him or not as father wished. Those he did not see he said he did not want to see them, because 'he was suffering, and when he got better in a few days he must see them.'"

196 Mr. NEWTON: "Mr. Newton objects to that statement as entirely evading the question propounded to the witness, and protests against it going upon the record because contrary to the spirit of the law of evidence and the practice as touching the obligation of the oath of the witness."

Q. Was not your father a man of social disposition, and had he not always been accustomed to a great deal of society?

A. Father was a quiet citizen—not what might be considered a society man; paid very few visits to some old acquaintances. He was a very retiring man.

Q. Since *his* lost his office under the Government had he always sufficient money to indulge the tastes of a gentleman? Answer.

A. He had. He was a man of no bad habits, who took sufficient exercise for his health. His wants were very few. He lived a very simple, plain life. Often when I would offer him money he would decline it, as he had no use for it.

197 Q. From whence did you derive your revenues from 1859, after your return from Indiana, to the time of your father's death?

A. From various sources—speculations in real estate, dabbling in tax property, being employed by the Government in special duties, and other ways.

Q. Whence did your father derive his revenues after he lost his office?

A. He had no revenues. He lived with me. I provided for him and did everything necessary for him, and paid for the same out of my own pocket.

Q. Was the charge or statement which you have previously alleged your brother Leonard stated to your father you had made, that he was in his dotage and wished to marry a certain lady, alleged to have been made by you before the institution for divorce of her suit by your mother or after its institution?

A. If I understand your question, my answer is that my
198 brother stated that I had said this to my mother not long before she died.

Q. Were you educated for the profession of the law?

A. I was not.

Q. Why did not Mr. McCorkle write a will instead of a deed?

A. Some days previous to the execution of the deed my father talked to me repeatedly about his condition, saying that while everything had been done to encourage him and to prevent his being depressed by telling him that he couldn't recover, and while he might recover, yet he could not lose sight of the fact that he was an old man, and as the doctor had admitted that it was a question of vital power, and as the chances seemed to him to be against him, he thought he ought to prepare for the worst. He said to me, You have had trouble enough in your young life and I see the disposition of your brothers and sisters to treat you unkindly, and therefore
199 you had better now, without delay, have a deed drawn for all the property included in the deed to your brother Leonard as trustee, which I gave you many years ago, as I feel so much better it ought to be done without further delay; when the deed is prepared ask Judge Willoughby to come to see me. I had the deed prepared — submitted to Judge Willoughby. Mr. McCorkle, being an old friend of my father's and rooming in the same room with him, and having plenty of leisure at the time, was asked, on account of his plain handwriting, to copy the deed, which he did. The deed was again submitted to Judge Willoughby, who went to see my father and had a talk with him alone, after which the deed was executed and witnessed by Judge Willoughby and Squire Walter.

Q. Had your father had access to the society of any one of his children during the day of the interview which you have last described upon the subject of this deed?

200 A. I think not; although they had every opportunity to see him that day, as they had all during his sickness.

Q. Did you not ever learn during the illness of your father that your brother Leonard had ever called to inquire after his father with the result of the servant saying that Mr. Brooke Mackall did not want him troubled with a visitor?

A. I do not recollect any such occurrence ever being brought to

my attention. I heard that my brother had been calling on Dr. Walsh at his office, and sometimes he called at the house where father was to know how he was, but I never did anything without it was first requested by my father. My brother Leonard had every opportunity to see my father and did see him, until father finally requested him not to come into the room until he was better. One reason was that Leonard smoked and his clothes were filled with cigar smoke, which was very offensive and unbearable to him,
201 especially when he was sick; another reason was that my brother Leonard on one occasion, while my father was lying *of* the bed looking at him, took my father's gold spectacles from the mantel-piece and put them in his pocket. Father told me of this, that it happened in my absence, and asked me what I thought Leonard meant by such behavior. He also took father's overcoat, which father said he had asked to loan him one day for that day, which he did not bring back, and requested me to ask Leonard to return his things; that he would need them in a few days when he got up. I thought it were better for him to send a message through the nurse, who was present and knew everything that was going on, which he did. The spectacles were returned, together with a note from Leonard, which I have.

Q. Did this incident of your brother Leonard, as you allege, having taken the articles in question occur in the room in which your father was first sick?

A. No, sir; in the room he died in.

202 Q. Was there anything said by you or in your hearing or had you in your own mind the thought previous to the instrument referred to having been copied that a will is revokable and that a deed of conveyance is voidable only at law?

A. I knew that a deed could not be changed by a man after being executed. In other words, that a will would not take effect until after a man's death, while a deed would on delivery.

Q. It being natural to suppose that you desired that your father should live, what provision was in your mind in the event of his surviving and recovery for his future support?

A. I had supported him for a great many years, and I intended to support him and to treat him as a son should a father as long as he lived.

Q. Was there a schedule or any statement in writing or otherwise considered between your father and yourself as to the items that constitute the alleged consideration of that deed as to services rendered, moneys advanced, and so on?

203 A. No.

Q. Did you not have some thoughts as an intelligent man of the effect ascribed by some law writers to the intrinsic and inherent effect of the seal to bind parties and change the property embraced in a supposable instrument purporting to be a deed signed, sealed, and delivered at the time this deed suggested itself?

A. I do not understand your question exactly. I mean to be understood as saying that father said he desired to carry out his promise made many years ago.

(Mr. Newton here closed the cross-examination of this witness on behalf of the defendant, Leonard Mackall.)

(Mr. Willoughby, counsel for complainant, objects to all the foregoing testimony brought out on cross-examination by counsel for the defendant, Leonard Mackall, and gives notice that at the proper time he will move to have it expunged from the
204 record at the cost of said Leonard Mackall or his counsel; and counsel for complainant further announces that his testimony-in-chief is closed.)

(Signed) B. MACKALL, JR.

Sworn to and subscribed before me this 23rd day of October, A. D. 1882.

(Signed) LORENZO A. BAILEY,
Examiner in Chancery.

Adjourned *sine die*.

(Signed) LORENZO A. BAILEY,
Examiner in Chancery.

DISTRICT OF COLUMBIA, } ss:
County of Washington, }

I, Lorenzo A. Bailey, an examiner in chancery in and for the District of Columbia, do hereby certify that, in pursuance of notice and agreement between counsel, the foregoing deposition was taken down by me and reduced to writing in the presence of and from the statements of the witness, at the times and places designated in the caption thereof, and were then and there read over by the witness
205 and by — subscribed in my presence and in the presence of counsel, who were then and there attending, the witness having been by me first duly sworn to testify the truth, the whole truth, and nothing but the truth touching the matters at issue in said cause.

I further certify that I am not of counsel for any of the parties to said cause, and in nowise interested therein.

(Signed) LORENZO A. BAILEY,
Examiner in Chancery.

EXHIBIT B. M. No. 1.

To the hon. judges of the circuit court of the District of Columbia for the county of Washington, sitting in equity:

Humbly complaining, sheweth unto your honors your orator Brooke Mackall, that on the 25th day of July, in the year eighteen hundred and thirty-one, a certain Edward Thompson, of Philadelphia, conveyed lot No. seven, in square No. two hundred and twenty-three, in the city of Washington, to William S. Nicholls, of
206 Georgetown, D. C., in trust, to sell the same at public or private sale and for cash, or upon credit, with the assent of Francis S. Key and James Dunlop, of said Georgetown, and on payment of the purchase-money to convey the same in fee-simple to the purchaser, and out of the proceeds of sale to pay the reasonable expenses attending the execution of the trust; in the next place, to pay to Francis S. Key and James Dunlop, Esq'rs, one-half of the

proceeds of the sale of said lot for legal services rendered by them, and the balance of the purchase-money to pay over to the assignees of said Thompson, viz., Richard Renshaw and Peter Mackie; all which will appear by reference to a copy of said deed herewith filed, marked Exh't A. B., which your orator prays may be taken as part of this bill of complaint.

Your orator is advised that the said deed constituted the said William S. Nicholls a trustee as to one undivided moiety of said lot, for the said Renshaw and Mackie, and as to the other moiety for the said Key and Dunlop, and that upon a sale by said
207 parties of their respective interests in said property the said Nicholls would be bound to convey accordingly.

And your orator further shows that the said Nicholls heretofore purchased in his own right the interest of said Renshaw & Mackie in said property, viz., one undivided moiety thereof, and subsequently sold the same to William W. Corcoran, from whom it has been purchased by your orator, and that your orator has likewise purchased from the said James Dunlop and the representatives of the said Francis S. Key all their interest in said premises, so that he is now the sole and exclusive owner thereof.

And your orator further shows that, being entitled to a conveyance of said lot from said trustee, your orator has called upon him for a deed of the moiety — said lot, to which said Key and Dunlop were entitled, and he has refused to execute said deed, whereby your orator has incurred great inconvenience and loss, having been
208 thereby prevented from selling said property at a considerable profit.

Your orator is advised that his only relief is through your hon. court, and that he is entitled to relief by a decree of your hon. court requiring said Nicholls to execute said conveyance.

In tender consideration whereof and forasmuch as your orator is without adequate relief at common law, and to the end that the said William S. Nicholls may be made a party defendant hereto, and may be required to make true, full, and perfect answers, on his corporal oath, to the several matters herein alleged, and that your honors may require him to execute a good and sufficient deed in fee-simple to your orator of the undivided moiety of said lot of ground purchased by him from said James Dunlop and the rep's of said Fran. S. Key as aforesaid, and may grant such other and further relief in the premises as may be just and equitable, all which your orator humbly prays, may it please your honors, the premises considered, to grant the usual writ of subpœna, &c., and
209 he will ever pray, &c., &c.

(Signed) WALTER S. COX, *Sol'r.*

Endorsed: 1112. Brooke Mackall *vs.* Wm. S. Nicholls. Bill and one exhibit. The clerk will file these and issue subp'a to September rules. (Signed) Walter S. Cox, sol'r. Filed 31st Aug't, 1855.

Exhibit B. M. No. 1.
(A true copy.)
(Signed)
10—106

L. A. BAILEY,
Exam'r in Chancery.

EXHIBIT B. M. No. 1.

Circuit Court of the District of Col'a for the County of Wash'n. In Equity.

BROOKE MACKALL *vs.* WM. S. NICHOLLS.

In this cause it appearing to the court that the defendant, Wm S. Nicholls, has not appeared and answered the bill of complaint within the time required by the rules of this court, although duly summoned, it is by the court, this sixteenth day of May, A. D. 1856, ordered that the bill of complaint be taken *pro confesso* against
210 the said defendant, Wm. S. Nicholls; and it is further ordered, adjudged, and decreed that the prayer of said bill be granted, and that the said defendant do forthwith convey to said complainant, Brooke Mackall, his heirs & assigns, by a good and sufficient deed in fee-simple the moiety of the premises described in said bill of complaint as having been purchased by said complainant from James Dunlop and the representatives of Francis Key, dec'd, said complainant to cause said deed to be prepared and to tender the same to said Nicholls for execution; this decree to be absolute against said defendant in case no cause shall be shown to the contrary at or before the term of this court next subsequent to that to which this decree shall be returned executed.

By order of the court.

Test: (Signed) JNO. A. SMITH, *Cl'k.*

Exhibit B. M. No. 1.
(A true copy.)
(Signed) L. A. BAILEY,
Exam'r in Chancery.

211 EXHIBIT B. M. No. 1.

Circuit Court of the District of Col'a for the County of Wash'n. In Equity.

BROOKE MACKALL *vs.* WM. S. NICHOLLS.

It appearing to the court that no cause has been shown to the contrary, it is by the court, this sixth day of November, A. D. 1856, ordered that the decree *nisi*, passed in this cause on the sixteenth day of May last, be, and it is hereby, made final and absolute against the defendant, Wm. S. Nicholls; and it is further ordered and decreed that said defendant do pay the costs of this suit.

By order of the court.

Test: (Signed) JNO. A. SMITH, *Cl'k.*

Exhibit B. M. No. 1.
(A true copy.)
(Signed) L. A. BAILEY,
Exam'r in Chancery.

212 EXHIBIT No. 2. (S'g'd) L. A. Bailey, Exam'r in Chancery.

OFFICE OF THE COLLECTOR OF TAXES,
DISTRICT OF COLUMBIA,
WASHINGTON, *Sep.* 21, 1882.

Mr. W. Willoughby:

On the following real estate, to wit, 107 feet 2 inches next north 44 feet of lot 7, square 223, assessed, in 1882, in the name of A. Richards, there now appears, by the books and records of taxes and assessments, to be due and unpaid the following assessments of tax, as hereon certified to by the officers in charge of the respective accounts:

OFFICE OF THE ASSESSOR,
DISTRICT OF COLUMBIA, *Sep.* 21, 1882.

Collector of taxes, D. C.:

I hereby certify that the books and records of taxes and assessments of this office for the years 1860 to 1882 show that upon the property described above taxes — due as follows: For 1873, $744.52 (cert. 6832); for 1874, $875.90; for 1875, $1,311.15; for 1876, $600.81; for 1877, $600.81, on all of 7; for 1878, $310.94; for 1879, $244.73; for 1880, $244.73; for 1881, $244.73; for 1882, $244.73, on p't of 7, square 223, with penalty and interest thereon as provided by law, as per schedule hereto annexed.

From 1860 to 1875, name of W. Nichols & Corcoran; from 1876 to 1882, name of A. Richards.

Lighting street, $30.00.

(Signed) WILLIAM MORGAN,
Assistant Assessor.

OFFICE OF THE SPECIAL ASSESSMENT DIVISION,
DISTRICT OF COLUMBIA, *Sep.* 23, 1882.

Collector of taxes, D. C.:

I hereby certify that upon the property above described in this certificate the records of this office show the following assessments for special improvements: Square 223, lot 7, fronting $151\frac{2}{12}$ feet on 14th street, in name of A. & T. H. Richards, $382.25, and interest from March 19, 1875; same lot, fronting $152\frac{9}{12}$ feet on N. Y. ave., in name of A. S. Nichols & W. W. C., tr., $836.55; costs, $9.45, and interest from Sept. 2, 1872.

[SEAL.] (Signed) WM. OSCAR ROOME,
Chief of Special Assessment Division.

[On margin:] N. 1–6. 01–304.

OFFICE OF THE ENGINEER COMMISSIONER,
DISTRICT OF COLUMBIA, *Sept.* 25, 1882.

Collector of taxes, D. C.:

I hereby certify that upon the property described in this certificate the records of this office show that the water-main tax on 107 feet 2 inches next north 44 feet of lot 7, sq. 223, name of A. Richards, is paid in full.

By order of the Engineer Commissioner.
(Signed) IRVIN MULLIGAN,
Chief Clerk.

Water rent excepted. Fee, 50 cents, paid.

[On margin:] 11,396. 4–167.

Witness my hand and seal of office this 25th day of Sept., 1882.
(Signed) JOHN F. COOK, [SEAL.]
Collector of Taxes, District of Columbia.

213 EXHIBIT No. 2. (S'g'd) L. A. Bailey, Exam'r in Chancery.

9,209 ft.

If bills are wanted return this slip.

OFFICE OF COLLECTOR, D. C., *Sep.* 21, 1882.

107.2 next N. 44 of lot 7, square 223, 107.2.

Year.	Tax due.	To whom assessed.	Folio.
1860	Paid	Wm. H. Nichols & W. W. C., T.	396
1861	"	"	200
1862	"	"	395
1863	"	"	400
1864	"	"	368
1865	"	"	403
1866	"	"	419
1867	"	"	444
1868	"	"	475
1869	"	"	485
1870	"	"	494
1871–'2	"	"	518
1873	744 52	Cert. 6832. "	268
1874	875 90	"	270
1875	1,311 15	"	288
1876	600 81	A. & T. A. Richards	417
1877	600 81	"	424
1878	of 7 / 310 94	Part "	439
1879	244 73	"	476
1880	244 73	"	116
1881	244 73	A. Richards	121
1882	244 73	A. Richards	120
1883			
1884			

Corporation specials.

214 EXHIBIT No. 3. (S'g'd) L. A. Bailey, Exam'r in Chancery.

OFFICE OF THE COLLECTOR OF TAXES,
DISTRICT OF COLUMBIA,
WASHINGTON, *Sep.* 21, 1882.

Mr. W. Willoughby:

On the following real estate, to wit, sub lot 12, square 223, 44 feet 14th Str., 152 ft. 9 inches N. Y. Av., assessed in 1882 in the name of Alfred Richards, there now appears by the books and records of taxes and assessments to be due and unpaid the following assessments of tax, as hereon certified to by the officers in charge of the respective accounts:

OFFICE OF THE ASSESSOR,
DISTRICT OF COLUMBIA, *Sep.* 21, 1882.

Collector of taxes, D. C.:

I hereby certify that the books and records of taxes and assessments of this office for years 1860 to 1882 show that upon the property described above taxes due as follows: For 1873, on lot 7, $744.52 (cert. 6832); for 1874, $875.90; for 1875, $1,311.15; for 1876, $600.81; for 1877, $600.81, name of Nichols & Corcoran; sub lot 12, being part of 7, square 223, name of A. Richards, W. Nichols & Corcoran from 1860 to 1875, with penalty and interest thereon, as provided by law, as per schedule hereto annexed; from 1876 to 1882, name of A. Richards.

(Signed) WILLIAM MORGAN,
Assistant Assessor.

Lighting street, $30.00.

OFFICE OF THE SPECIAL ASSESSMENT DIVISION,
DISTRICT OF COLUMBIA, *Sept.* 23*d*, 1882.

Collector of taxes, D. C.:

I hereby certify that upon the property above described in this certificate the records of this office show the following assessments for special improvements: Square 223, lot 7, fronting $151\frac{3}{12}$ feet on 14th street, in name of A. & T. H. Richards, $382.25, and interest from March 19, 1875 (lot 12 is supposed to be part of this lot); same lot, fronting $152\frac{9}{12}$ feet on N. Y. Ave., in name of H. S. Nichols & W. W. C., tr., $836.55; costs, $9.45, and interest from Sept. 2, 1872.

[SEAL.] (Signed) WM. OSCAR ROOME,
Chief of Special Assessment Division.

[On margin:] N. 1–6. 01–304.

OFFICE OF ENGINEER COMMISSIONER,
DISTRICT OF COLUMBIA, *Sept.* 25, 1882.

Collector of taxes, D. C.:

I hereby certify that upon the property described in this certificate the records of this office show that the water-main tax on sub lot 12, sq. 223, name of Alfred Richards, is paid in full.

By order of the Engineer Commissioner:
(Signed) IRVIN MULLICAN,
Chief Clerk.

Water rent excepted. Fee, 50 cents, paid.

Witness my hand and seal of office this 25th day of Sept, 1882.
(Signed) JOHN F. COOK, [SEAL.]
Collector of Taxes, District of Columbia.

[On margin:] 11395. 4–167.

215 EXHIBIT No. 3. (S'gd) L. A. Bailey, Exam'r in Chancery.

5,789 ft.

If bills are wanted return this slip.

OFFICE OF COLLECTOR, D. C., *Sep.* 21, 1882.

S. lot 12, square 223, 44 ft. 14th, 152.75 N. Y. Av.

Year.	Tax due.	To whom assessed.	Folio.
	7		
1860	Paid	W. H. Nichols & W. W. C., T.	396
1861	"	"	200
1862	"	"	395
1863	"	"	400
1864	"	"	368
1865	"	"	403
1866	"	"	419
1867	"	"	444
1868	"	"	475
1869	"	"	485
1870	"	"	494
1871–'2	"	"	518
1873	744 52	Cert. 6832. "	268
1874	875 90	"	
1875	1,311 15	"	
1876	600 81		
1877	600 81		
	S. 12		
1878	Paid	A. & T. A. Rich'ds	439
1879	"	"	476
1880	"	"	116
1881	"	A. Richards	121
1882	"	A. Richards	120
1883			
1884			

Corporation specials.

216 EXHIBIT B. M. No. 4.

I, Brooke Mackall, being of sound and disposing mind, memory, and understanding and of legal age, do make and declare this my last will and testament:

I give and bequeath my property, real, personal, and mixed, of every kind and description, to my son, Brooke Mackall, Junior, and I also appoint him my executor, to act freely and without security.

Given under my hand and seal this fifth day of August, 1870.

(Signed) B. MACKALL. [SEAL.]

Signed, published, and declared for his last will and testament, Brooke Mackall, in the presence of the undersigned, who, in his presence and at his request and in the presence of each other, have hereto signed our names as witnesses thereto.

(Signed) JAMES D. HENDLEY.
(Signed) F. COLLINS SMITH.
(Signed) J. H. JOSLIN.

A true copy.

(Signed) LORENZO A. BAILEY,
Exam'r in Chancery.

217 EXHIBIT B. M. No. 5.

I, Brooke Mackall, of the city of Washington, District of Columbia, being of sound and disposing mind, memory, and understanding and of legal age, do make, publish, and decree this my last will and testamant:

I give, devise, and bequeath all my property and estate, real, personal, and mixed, of every kind and description, to my son, Brooke Mackall, Junior, his heirs and assigns, forever, and also appoint him my executor, to act freely and without security.

In testimony whereof I hereunto set my hand and affix my seal in the presence of the witnesses named below this twenty-ninth day of July, in the year of our Lord one thousand eight hundred and seventy-six.

(Signed) B. MACKALL. [SEAL.]

218 Signed, sealed, declared, published, and delivered by the said Brooke Mackall, as and for his last will and testament, in the presence of us, who, at his request and in his presence and in the presence of each other, have subscribed our names as witnesses hereto this twenty-ninth day of July, A. D. 1876, the word last in the fourth line having been interlined previous to signing.

(Signed) E. D. F. BRADY.
(Signed) JNO. M. BUTLER.
(Signed) J. K. H. WILLCOX.

A true copy.

(Signed) LORENZO A. BAILEY,
Exam'r in Chancery.

219 *Testimony for Defendant, Alfred Richards. Filed December 7, 1882.*

BROOKE MACKALL, Jr., *vs.* ALFRED RICHARDS *et al.* } In Equity. No. 8118.

Be it remembered that an examination of witnesses was held on the first and second day of December, 1882, by the defendant, Alfred Richards, when the within depositions were taken.

I, Henry R. Elliott, examiner, did cause to be personally present, at the office of W. B. Webb, Esq., counsel for defendant, No. 406 5th street, Mathew G. Emory, Alfred Richards, and William Forsyth to testify on behalf of defendants in the above-entitled cause.

(Signed) HENRY R. ELLIOTT, *Examiner.*

220 *Evidence on Behalf of the Defendant, Alfred Richards.*

In the Supreme Court of the District of Columbia. In Equity.

BROOKE MACKALL, Jr., *vs.* ALFRED RICHARDS *et al.* } No. 8118.

WASHINGTON, D. C., FRIDAY, *Dec. 1st*, 1882.

Met, pursuant to notice, at the office of W. B. Webb, Esq., No. 406 5th street, at 1 o'clock p. m.

Present: W. B. Webb, counsel for defendant Richards; Judge W. Willoughby, counsel for complainant, and complainant.

MATHEW G. EMORY, a witness of lawful age, being first duly sworn to testify the truth, the whole truth, and nothing but the truth, deposes and says:

Being examined by Mr. WEBB, the witness says as follows:

Q. Where do you reside, Mr. Emory?

A. In Washington city, District of Columbia.

Q. How long have you resided in that city?

A. About forty years.

221 Q. What is your occupation at this time?

A. I am president of the Second National Bank.

Q. What was your occupation in 1864?

A. Stone-cutter.

Q. How long had you been in that business, and when did you finally give it up?

A. I was in business thirty years; I gave it up in 1872.

Q. Do you know the property at the corner of 14th & New York avenue, known as the Palace Market?

A. I do.

Q. Did you furnish any stone for that building, and to whom?

A. I did; to Mr. Brooke Mackall, Jr.

Q. At the time that Brooke Mackall, Jr., purchased the stone from you did he tell you who was the owner of the lot upon which the house was being erected?

(Question objected to by Judge Willoughby as incompetent.)

A. He did; he himself was the owner.

Q. Did he at that time or at any time exhibit to you any evidence of his ownership? And, if so, state the circumstances
222 under which it was done.

(Question objected to by Judge Willoughby as incompetent.)

A. He did; showed me a deed from his father for the property. He asked time of credit of the stone-work, and as evidence that he was good for it he showed me a deed of the property from his father.

Q. Did you examine the deed carefully at the time?

A. I read it over, sir, carefully; it was evidence to me. I acted upon good faith, and upon the faith of that deed furnished him the stone upon credit that he asked.

Q. Did you examine the deed sufficiently so as to be sure what property was conveyed by it, and that it was executed in due form?

A. I did; it conveyed the property that he was to build on at the corner of 14th St. and New York avenue. It was executed in due form by Mr. Mackall—the father—I believe the name. It is a good many years since, but I do not now remember the first
223 name. He said it was his father. He said his father gave him the lot.

Q. Do you remember to what amount you furnished stone for the building in question?

A. Not the exact sum, but about a thousand dollars, I think.

Q. Did Brooke Mackall, Jr., pay you for the stone so furnished by you?

A. He did not.

Cross-examined by Judge WILLOUGHBY:

X Q. In what year was this?

A. I don't remember the year; it was in sixty something—about the time he commenced the building. I could tell from my books at home.

X Q. Was this before the war?

A. About the time of the war, I think; it strikes me it was about then.

X Q. Were you then acquainted with Brooke Mackall?

A. I was not.

X Q. Were you acquainted with his father?

A. I knew there was such a man here.

X Q. Did you know him by sight?

A. I don't know whether I did or not.

X Q. Had you ever seen him write?

224 A. No, sir; not that I know of. I don't remember that I have.

X Q. You, of course, then, had no knowledge of his signature then, had you?

A. No absolute knowledge.

X Q. Can you tell whether that deed had more than one signature?

A. It had not but Mr. Mackall's signature.

X Q. Can you tell whether or not it had the signature of his wife?

A. I don't recollect that it had; it was evidence to me, and upon the faith of that deed I let him have the stone; he brought it to me upon a second interview upon agreement; in the meantime I was to figure up the estimate of the stone, which I gave him, and he stood beside me and read the deed and said he was the owner of the property, and upon that we entered into the contract. I furnished him the stone and he never paid me for it.

(Judge Willoughby objects to the last part of the answer as not responsive to the question.)

225 X Q. Will you state positively whether or not the wife's signature was to the deed?

A. I think it was not, but I am not positive.

X Q. Did it not attract your attention as to whether the wife's signature was to the deed?

A. I don't recollect that it did; nothing was said about it. I am inclined to think it was not there. I am quite sure that it was not there.

X Q. Were you at this time familiar with this property?

A. I knew the lot, the location of it, as I know it now.

X Q. Do you now recollect, considering only the language of the deed and without reference to your knowledge of the location, the description as it was described in the deed?

A. I can't repeat it; over twenty years ago. It satisfied me at the time that it was the lot he was going to build on.

X Q. Did it contain other lots?

A. I don't know about lots. I think the building did not cover all the ground embraced in the deed. I don't think it con-

226 tained other lots outside of this property.

X Q. What is your best recollection as to that; did it or did it not?

A. I don't think it embraced other outside property.

X Q. Was this deed written upon a blank form?

A. It was not.

X Q. Was it witnessed?

A. Yes, sir; it was regularly executed.

X Q. How many witnesses were there to it?

A. The usual number required by law—two I think.

X Q. Do you recollect the number of witnesses?

A. I think there was two witnesses. I was satisfied it was regularly executed, and that is all I recollect about it.

X Q. I am now speaking of the witnesses, and not of the ac-

knowledgment. Do you recollect whether there were any witnesses to the deed?

A. I think there were two.

X Q. Can you state the name of either of these witnesses?

A. I cannot.

227 X Q. Can you state now from your recollection alone whether the signatures of these witnesses were genuine?

A. I don't know whether they were genuine or not, but they were parties I knew, and — was satisfied it was all right, but I did not see them write their names or do I now know who they were.

X Q. Can you state whether or not the deed was acknowledged before a notary public?

A. I cannot; I don't remember.

X Q. Can you state whether or not the deed showed that it had been recorded?

A. I don't think it had; he said it had just been given to him.

X Q. Can you state the date of the deed?

A. No, sir.

X Q. Can you state the consideration of the deed?

A. No, sir; whether it was $1 or $5,000 I don't recollect. He said it was a gift from his father.

X Q. Can you state whether or not the deed contained any covenants; and, if so, what they were?

228 A. I can't repeat over the deed, read over twenty years ago.

X Q. Can you remember what was the number of the square?

A. No; it was the southwest corner of 14th St. and New York avenue.

X Q. Do you mean to say that the deed stated 14th St. and New York avenue?

A. Yes; it mentioned it specifically.

X Q. Did you examine the record to see whether the father had any title to it or not?

A. I did not; I knew I would put a lien on the property if he did not pay, which I did, and made my money out of it.

X Q. Can you tell whether the deed was signed B. Mackall or B. Mackall, Sr., or Brooke Mackall or Brooke Mackall, Sr.?

A. I think it was signed Brooke Mackall; that is my recollection. I don't remember whether it had a senior to it or not.

X Q. Do you remember whether the deed was made subject to any other liens or claims upon it?

A. None that I remember of.

X Q. You can't state positively, can you?

229 A. I don't remember of any.

X Q. Would you say that there were none?

A. If there were I think I should remember it. I don't remember any.

X Q. Was the deed brought to you twice?

A. He may have had it there twice, but I don't remember of having read it over carefully but once.

X Q. Did you read it then or was it read over to you?

A. I read it over and he stood by me while I read it.

X Q. State exactly where you stood when this was done.

A. I stood in the front edge of my stone-cutter's shed, about half way down from the west end of it.

X Q. Can you state any of the language of the deed?

A. It was drawn in the usual language used in drawing deeds; that is all I can say.

X Q. Didn't you depend more upon the lien law than you did upon the deed?

A. I was aware that I could put the lien upon the property and only wanted the deed to identify the young man as the owner
230 of the property upon which he was going to build; if I had intended to make the money by a suit I would have gone to the record office to see if it was properly recorded; the deed was not recorded. I took his word for his being the owner.

X Q. Can you state whether or not the deed had a seal?

A. It had; the usual way of sealing it was a scrowl.

X Q. Do you recollect whether there was in the instrument itself any acknowledgment by the party that this was his seal?

A. Regularly acknowledged it was. I can't say that it was in the deed. I mean to say that it was acknowledged in the usual way.

X Q. Can you state the words of the acknowledgment, if there were any, in the body of the instrument that the seal was the seal of the party signing the same?

A. I have said twice or three times that I cannot repeat the words, but that it was in the usual form that I have been accustomed
231 to see. I acknowledged this to be my hand and seal.

X Q. You state this, do you not, because you remember that it was a deed in the usual form and not from your present recollection of the words or phrases in the deed?

A. I do not remember the phraseology of the deed, but it was in the usual form that I have been accustomed to see. If it had been any other form I should have noticed it.

X Q. Can you state from present recollection alone and without any reasoning upon the subject whether it was acknowledged before one or two officers?

A. I think it was two; I am not positive.

X Q. Can you state whether it had any internal revenue stamp upon it?

A. I don't remember; I don't think it had; my judgment is it had none. If it had been during the time that stamps were required and it had none I would have noticed it, but I think it had none.

X Q. Will you look at a paper now shown you and state
232 whether it had this general appearance?

(Paper shown to witness.)

(Mr. Webb objects to the question unless the paper is put in evidence.)

A. It had the same general appearance that one sheet of paper has to another. It is not in the same handwriting. Paper shown

me is nothing like the deed that was shown me by Brooke Mackall; it is not in the same handwriting.

X Q. Do you remember whether or not the deed which you saw was written in the same handwriting as the signature?

A. I do not.

X Q. Can you say positively whether or not the writing in the body of the instrument was in the same handwriting as the signature?

A. I cannot.

X Q. Was the writing in the body of the instrument a fine handwriting or a coarse handwriting?

A. I think it was medium; call it coarse, if anything. It was fully as large as the writing of the examiner.

233 X Q. Did you know whose writing it was?

A. I did not.

X Q. How old did Brooke Mackall appear to be at that time?

A. He did not look to me to be over twenty or twenty-one years of age; he was a very young looking man.

X Q. Don't you remember Brooke Mackall's coming to you about some lots he had in the first ward and his wanting you to take those lots in payment of your claim?

A. I don't recollect it; it may be so, or may not be so.

(Signed) M. G. EMORY.

Sworn and subscribed to before me this 11th day of December, A. D. 1882.

(Signed) HENRY R. ELLIOTT, *Examiner.*

Adjourned to meet at the same place on Saturday, Dec. 2, 1882, at 11 o'clock.

WASHINGTON, D. C., *Dec.* 2, 1882.

Met pursuant to adjournment.

234 Present: Mr. W. B. Webb, counsel for def't Richards—Alfred Richards; Judge Willoughby, counsel for complainant, and the complainant.

ALFRED RICHARDS, a witness of lawful age, being first duly sworn, deposes and says:

Before deposition Mr. R. M. Newton, counsel for Leonard Mackall, one of the defendants, appears and desires to have his appearance entered.

Being examined by Mr. WEBB, witness says as follows:

Q. Are you one of the defendants in this case?

A. Yes, sir.

Q. Do you know the property situated at the corner of 14th St. and New York avenue, known as the Palace Market?

A. Yes, sir.

Q. Are you the owner of that property?

A. Yes, sir.

Q. From whom did you purchase it, and if you recollect when, at what time?

A. I bought it at the marshal sale in 1870, I think.

235 Q. What did you find upon the lot when you purchased it?

A. I found the old brick walls and all the inside timber was rotten.

Q. Do you mean the brick walls of the building that is now standing there?

A. Yes, sir; in part. One part I had to tear down and rebuild again.

Q. To what extent had the building been carried up at that time?

A. Two stories above the cellar and a scaffold high on the third story.

Q. What was the condition of the stone-work?

A. Well, some of the heads and some of the sills had fallen down in the cellar and were broken.

Q. What was the condition of the inside wood-work?

A. All the timbers inside were rotten, excepting the frames on the lower story, which were in good condition.

Q. Please state what, in your opinion, the brick walls, as they stood, were worth for the purpose of using them in the completion of the building.

236 (Question objected to by Judge Willoughby as immaterial and incompetent.)

A. In my judgment, I should suppose they would be worth between three and four thousand dollars.

Q. What were they worth as old material?

A. I suppose about half the amount.

Q. What was the shape of the house that you found upon the lot?

A. I hardly know how to answer that question; it was a very peculiar shaped house. Three walls stood on right angles — the south wall. The front wall stands on right angles. I don't know about the west wall. The general shape of the building is wedge shape.

Q. What did you do with the building?

A. I completed the house. To do it I had to take down a part of one of the walls to do it.

Q. Did you complete it in the shape in which it stood, or did you change the plan?

A. I completed it in the shape in which I found it.

Q. Had you any particular reason for completing it in that shape?

237 A. Yes, sir; because my money was very scarce, and I wanted to build it up to make it available.

Q. State, if you can, about what amount of money you have expended in and about that building in order to make it available.

(Question objected to by Judge Willoughby unless the witness states the item.)

A. Between ten and eleven thousand dollars.
Q. How do you reach that amount?
A. By bills and receipts that I have paid.
Q. What other sums have you paid on account of that property?

(Question objected to by Judge Willoughby as immaterial and incompetent and that the question is too indefinite.)

A. I paid the marshal twenty-five hundred dollars. The property was sold for taxes, and I paid them, amounting to about
238 twenty-five hundred dollars, the Wheatley judgment twenty-one hundred and forty-nine dollars and ninety-two cents. I have some other bills which I have never put in.

Q. After taking possession of this property did you ever tell Brooke Mackall, Jr., the plaintiff here, that you intended only to hold the property until you got your debt out of it, and then deed it to him?

A. No, sir; not to my recollection.

Q. Did Brooke Mackall, Jr., ever make any proposition to you with respect to the conveyance of that property to him; and, if so, what was it?

A. He offered to me on one occasion some property in a court between 13th & 14th streets and G — and New York avenue. I told him I would look at it and let him know. I think that was about the last of it.

Q. Did he ever offer you any other property upon the same terms?

A. He told me he had some property he would like to give me in exchange in the first ward. I think it was on 22nd or 23rd streets, south of the avenue.

239 Q. Of what did the property in the court of which you have spoken consist?

A. Some little two-story brick tenaments; I think they were brick; I never was there but once.

Q. Why did you reject this offer of the property in the court?

A. I did not think it was worth anything like the property I had was worth.

Q. Did you make this reason known to Brooke Mackall, Jr.?

A. I can't say I did, sir; I don't know whether I did or did not.

Q. Was it after the rejection of this offer that he made you the other offer?

A. I can't tell which was made first.

Q. When were these offers made to you—before or after the sale to you by the marshal?

A. I think the house was finished and under rent before these offers were made, some time after I purchased from the marshal.

Q. Did either Brooke Mackall, Sr., or Brooke Mackall, Jr., or both of them ever make any tender to you in settlement of your debt against them? And, if so, state all the particulars with regard to it.

240 A. My house was empty on one occasion; my family was out of town; there was no one at home. I went into the

back yard expecting to find a servant there and there were none there. I started then to go to the back gate and heard the front door-bell ring. I turned and then went to the front gate and saw the two Mackalls and another gentleman. Mr. Mackall, Sr, said he had come down to make me a tender for my judgment I had against him. I told him I did not know the amount; he said he did, and it was five hundred dollars. I told him I did not, and that all my papers were with Mr. Webb. He called Mr. Alexander, the name of the other gentleman, to bear witness that he had offered me — tender. I said to him if he would get in my buggy and ride up to Mr. Webb's office we could settle it there. He thanked me and said he had a carriage of his own. I then told him I had an engagement at Mr. Webb's office at half past eleven. About a half hour afterwards I met him, Mr. Mackall, Sr., at the corner of 4½ St.
241 and Louisiana avenue. I told him then if he would go to Mr. Webb's office we could settle. He answered me by saying that he had made me a tender and he was done with it.

(The testimony as to the conversation and transaction between witness and Brooke Mackall, Sr., is objected to by Judge Willoughby, on the ground that Brooke Mackall, Sr., is dead, and this testimony for that reason is incompetent.)

Q. What did you mean by a settlement in this interview with Brooke Mackall?

A. I meant he could settle with Mr. Webb any way that Mr. Webb thought right, as he had all the papers.

Q. Did you furnish to Brooke Mackall, Jr., any of the materials that were used in the partial erection of the building at the corner of 14th St. and New York avenue; and, if so, what materials?

A. I sent him some brick; I think it was about 1864. I think I sent him some in 1865, too.

Q. Were you acquainted with Brooke Mackall, Jr., at that time?

242 A. No, sir.

Q. Was the sale made upon credit?

A. No, sir; made with a promise of cash.

Q. Did he make any statement to you at the time about the ownership of the lot?

(Question objected to by Judge Willoughby as incompetent.)

A. When he came to me to buy brick I thought he was a contractor. I asked him who he was going to build for. He said he was going to build for himself, and the building was already started. He said his father had given him a lot, and he was going to build a fine house on it. That was about all at the first interview.

Cross-examined by Judge WILLOUGHBY:

X Q. Have you the bills showing all the moneys paid for the completion of this building, and showing what the money was paid for?

243 A. I think some few of them have been destroyed; most of them I have. The parties are living that did the work where the bills are destroyed.

X Q. Have you bills to show the whole amount you have named here?

A. I think I have, with the exception of one or two, as I said before.

X Q. What are those one or two—who are they, and what are they for?

A. I don't think I can name them; to the best of my knowledge Mr. George Courtney is one; I can't recollect any more; I had all the bills at one time, and made a list of them.

X Q. Where is that list?

A. It is in this office somewhere.

(Mr. Webb says he has the list and will have a clear copy of it made if Judge Willoughby desires.)

X Q. Can you state the amount of any separate item?

A. No, sir; I cannot.

X Q. Have you books showing these items?

A. Only for my own business—that is, for the bricks I furnished; the others are by bill; I have no memorandum but by checks
244 and bills; the memorandum upon the checks show to whom they are given, and the amount.

X Q. Were all these bills paid by check?

A. I could not answer that question; some small amounts might have been paid in cash.

(Judge Willoughby desires to state that he objects to the evidence of his account, on the ground that he has not stated the items and not furnished the best evidence.)

X Q. Was this twenty-five hundred dollars which you paid on account of taxes upon a purchase made by you at the tax sale upon the whole lot seven?

A. I don't know whether it were or not; I think it were, though.

X Q. Did you institute a proceeding in court against the District of Columbia to recover back these taxes, on the ground that the sale was illegal?

A. Mr. Webb did for me.

X Q. When was that sum paid?

A. I cannot give the date; I think it was in 1871 or 1872.

245 X Q. You still claim, do you not, that the District of Columbia should reimburse you that amount?

A. I think I ought to be reimbursed by somebody. I don't know who it should be.

X Q. Do you not claim that the District should?

A. I have never given it a thought from that day to this. I have a great deal of business to attend to and cannot think of everything.

X Q. Have you ever given up that claim?

A. No, sir.

X Q. When did you pay the Wheatley judgment?

A. I can't name the date.

X Q. Is that Wheatley judgment the same that you are endeavoring to recover in the suit now pending in the Supreme Court of the United States against Brooke Mackall, Jr., and others?

A. I can't answer that question. It is part of my claim that I have against the estate. There is but one Wheatley judgment.

X Q. When was the building completed?

A. In 1871, to the best of my judgment.

246 X Q. What is the building renting for at this time?

A. Both parts together are renting for fifteen hundred dollars.

It is agreed that Mr. Kennedy's statement of rents made in the ejectment suit may be read in evidence, and copy is filed herewith.

X Q. Were not the lots in the first ward offered to you by Brooke Mackall, Jr., to settle your judgment before the execution sale?

A. No, sir.

X Q. Was it not between twelve and thirteen hundred dollars that was offered to — by Brooke Mackall, Sr.?

A. He never offered me a cent in his life, to my knowledge, only in words as a tender.

X Q. Was that the sum that he tendered you, as you say, in words?

A. No, sir.

X Q. Were you then willing to accept the full amount of your judgment in satisfaction of your claim?

A. My intention was to leave it to Mr. Webb to settle as he thought right.

247 X Q. Did you take possession of the building after the sale without the knowledge of Mr. Mackall?

A. I don't know whether Mr. Mackall knew it or no.

X Q. You took it, then, without asking the consent of anybody?

A. I asked Mr. Webb's opinion and took it upon that opinion.

X Q. Was it fastened up when you took possession?

A. It had been boarded up, but the two openings on New York avenue and the one on the 14th St. side were open. I don't know how the board came off—whether it was blown off or not. I know it was off.

(All testimony in relation to taking possession of the property objected to by Mr. Webb as not being material and not proper on cross-examination.)

X Q. Are you the owner of property, real estate, outside of this property in question?

248 (Question objected to by Mr. Webb as immaterial and not proper on cross-examination.)

A. Yes, sir.

X Q. To what extent?

(Mr. Webb objects to this question, and Judge Willoughby waives it for the present.)

X Q. Can you state the year in which the building was commenced by Brooke Mackall, Jr.?

A. Not positive. I sent brick there in 1864; I think it was about that time.

Mr. R. M. Newton waives any cross-examination of the witness Richards. Judge Willoughby objects to Mr. Newton's interfering in any way in the examination of witnesses upon the issue between Brooke Mackall and Mr. Richards.

(Signed) ALFRED RICHARDS.

Sworn and subscribed to before me this 2d day of December, A. D. 1882.

(Signed) HENRY R. ELLIOTT,
Examiner.

249 WILLIAM FORSYTH, a witness of lawful age, being first duly sworn on behalf of the defendant, Richards, deposes and says:

Q. What position do you hold in the District of Columbia?

A. I am surveyor of the District of Columbia.

Q. As such surveyor do you have charge of records of subdivisions of lots in the city of Washington?

A. I have.

Q. Have you examined those records recently to ascertain whether there is any recorded subdivision of lot 7, in square 223, in said city?

A. I have.

Q. Please state whether you find any subdivision of said lot on said square among the records in your office; and, if so, please state for whom that subdivision was made.

A. The plat now shown me is the only recorded subdivision of that lot in my office made by Richards. There is no other recorded subdivision of that lot on record in my office.

250 (Plat offered in evidence, and Mr. Webb asks the examiner to attach it to the deposition, which is accordingly done and marked W. F., Exhibit No. 1.)

Judge Willoughby objects to the same as incompetent and immaterial.

Q. Look at the plat now shown to you, and which is pasted in the sixth paragraph of the bill filed in this case, and state whether any such subdivision of lot 7, in square 223, appears of record in your office.

(Plat shown witness.)

A. No, sir.

Q. Is there any other office in the District of Columbia in which subdivisions of lots in the city of Washington are recorded?

A. None other that the law recognizes.

Cross-examined by Judge WILLOUGHBY:

X Q. Did you make a plat resembling the last one spoken of by you, on your own private books?

A. There has been a plat, a sketch, on my private book, in
251 pencil, shown as subdivision, similar to the one I have seen in the bill. When it was made or who ordered it I could not tell. I made it at the suggestion of some one, but I can't tell who. There is a memorandum in connection with it, dated the 29th of August, 1864, reading like this: "Established east and north line lot 7, square 223, 29th August, 1864;" and another memorandum: "Examined lines of lot 14, sq. 223, 5th Oct., 1864."

X Q. Is this sketch in the book that you carried with you in making surveys and one that you used in surveying?

A. Yes.

Redirect by Mr. WEBB:

Q. What does that memorandum "Established the east and north lines" signify?

A. That means that I laid out those lines on that date.

Q. Is it not one of your duties as the surveyor of the city of Washington, when a party is about to build on a lot, to ascertain and establish the building lines, and was that not what was done
252 in this case?

A. It was my duty to do that, and that is what was done.

(Signed) WM. FORSYTH,
Sur'y'r Dist. Col.

Sworn and subscribed to before me this 2nd day of December, A. D. 1882.

(Signed) HENRY R. ELLIOTT, *Examiner.*

DEC. 7*th*, 1882.

Mr. W. B. Webb, solicitor for the defendants, produces and offers, in conformity with the notice heretofore given by him, copies of the proceedings in equity cause No. 1703, docket 9, B. Mackall, Jr. *vs.* W. B. Todd & others; and also the proceedings in equity cause No. 1774, doc. 9, B. Mackall, Jr., *vs.* Plant, Emory *et al.*, and requests the examiner to make them part of the record, which is accordingly done; also certificate from the office of the collector of taxes.

Judge Willoughby objects to the offering of the foregoing papers as incompetent and immaterial.

253 The papers above referred to are herewith filed and marked as follows:

Copy bill in eq. 1774, A. R. Exhibit No. 2.
Copy bill " " 1703, A. R. Exhibit No. 3.
Answer Richards 1774, A. R. " No. 4.
" Plant 1774, A. R. " No. 5.
" Emory 1774, A. R. " No. 6.

Also a stipulation between counsel as to certain papers and evidence used in equity cause No. 2373 to be used and read in evidence in this cause. The same with the printed evidence referred to is herewith filed and marked A. R. Exhibit No. 7.

DISTRICT OF COLUMBIA:

I, Henry R. Elliott, an examiner in chancery, do hereby certify that the foregoing depositions were taken down and reduced to writing by me in the presence and from the statements of the witnesses at the time and place designated in the caption thereof, and were then and there read over by me to the witnesses and by them
254 subscribed in my presence; and that I was attended by the counsel of both parties, respectively, and the witnesses were first duly sworn to testify the truth, the whole truth, and nothing but the truth touching the matters at issue in said cause.

I further certify that I am not of counsel for any of the parties to said cause or in any manner interested therein.

(Signed) HENRY R. ELLIOTT, *Examiner*.

255 A. R. EXHIBIT No. 2. (Signed) Henry R. Elliott, Examiner.

In the Supreme Court of the District of Columbia. In Chancery.

Brooke Mackall, Junior, of the city of Washington, in the District of Columbia, brings this his bill against George H. Plant, Mathew G. Emory, Alfred Richards, and T. F. Richards, partners under the name and firm of A. & T. F. Richards; W. H. Owen and Thomas Wilson, partners under the name and firm of Owen and Wilson, and Alexander Sharp, all of said city.

And thereupon your orator shews that the said defendants, except said Alexander Sharp, are the holders of certain judgments against your orator, recovered on the law side of this court and being for about $375, $260, $1,450, and $1,180, respectively, and in the aggregate amounting to about $3,265, and that executions have been sued out upon said judgments, under which the said Alexander Sharp, marshal of this District, has levied upon part of lot numbered seven (7), in square number two hundred and twenty-
256 three (223), with the improvements, in said city, and has advertised the property so levied on for sale on Wednesday, the 15th of September, 1869, at 12 o'clock, and your orator files herewith the advertisement of said marshal shewing the property so levied on and advertised, marked B. M., Jr., Exhibit No. 1, and prays the same may be taken as part hereof.

Your orator further shews that he is equitably entitled to the whole of said lot, with the appurtenances, having received a parol gift of the same about ten years ago, under which gift he entered upon and took possession of the said lot and subsequently improved a small portion thereof by the partial erection of a building at a cost of near $10,000, the completion whereof was prevented by the military seizure of the property and its appropriation to Government purposes, but that the said property has never been conveyed

to your orator, nor has he any legal title to the same or any part thereof.

Your orator further shews that said lot is situated at the corner of New York avenue and 14th street west, and is of large
257 value, being worth upwards of $30,000; that the building aforesaid is built at said corner fronting on New York avenue about 61 feet, and with a depth on said 14th street of about 41 feet, the said depth gradually diminishing to about 14 feet; that the dimensions of the whole of said lot are 151 feet 2 inches on said 14th street, 159 feet 9 inches on New York avenue, the south line 100 feet, and the west line 97 feet 5 inches, and that said building was purposely constructed so as to have no connection or communication with the residue of said lot, nor to be used with the same, but to leave the same free for future improvements, both on said 14th street and New York avenue.

Your orator shows that on the execution of said writs the marshal levied as follows: "Part of lot No. 7, in square No. 223, in the city of Washington, D. C., beginning at the northeast corner of said square, thence south 44 feet; thence west to the west end of the lot; thence in a northerly direction with the west line thereof to the north line of said lot; thence with said north line to the place of beginning, together with the improvements thereon."

258 And your orator shows that the effect of said levy and a sale thereunder will be greatly to impair the value of the residue of said lot by depriving your orator of the benefit of frontage on New York avenue, whereby he must incur great and unnecessary damage, and at the same time will further sacrifice the interests of your orator, by reason of the wholly insufficient depth on New York avenue of the part of said lot levied on and its inconvenient shape for business or other purposes, and your orator files herewith a diagram, marked "B. M., Jr., Exhibit No. 2," showing the dimensions of said lot, the part thereof occupied by said building, and the part levied on by the marshal and advertised as aforesaid, and prays the same may be taken as part hereof.

And your orator shows that the part of said lot covered by said building is, together with said building, worth far more than the aggregate amount of all said judgments.

Your orator shows that, straightened in means, but with
259 the best disposition to pay the said judgments, he is yet unable to do so, and, whilst admitting the superior rights of his creditors, he yet claims protection against unreasonable and wholly unnecessary damage.

Your orator admits that the said judgment of George H. Plant and Mathew G. Emory are for materials furnished in the construction of said building, and purport to be recovered in pursuance of the provisions of the act of Congress of the 2nd of February, 1869, affording a lien to mechanics and material men for work and materials done and furnished in the construction and repair of buildings in this District.

Your orator further shows that the description of the part of said lot levied on contained in said advertisement is not only an in-

definite, but an impossible description, and that a sale according to the same will still further prejudice the rights & interests of your orator. To the end that the defendants above named may answer this bill and that the sale of the property levied on and ad-
260 vertised as aforesaid may be enjoined, and that your orator may have such other and further relief as may be right, may it please the court, the premises considered, to grant writs of subpœnas against the defendants above named, and also the writ of injunction against said marshal, and as in duty, &c.

(Signed) B. MACKALL, JR.

W. D. DAVIDGE,
R. B. WASHINGTON,
Sol'rs for Comp't.

DISTRICT OF COLUMBIA, *ss:*

Before me, clerk of the supreme court in and for the District of Columbia, personally appeared this 15th day of September, 1869, Brooke Mackall, Junior, whose name is subscribed to the foregoing bill, and made oath in due form of law that the matters & things therein stated as of his own knowledge are true, and that as to such as are stated on information and belief he believes the same to be true.

(Signed) R. J. MEIGS, *Clerk.*

A true copy.
[SEAL.] Test: (Signed) R. J. MEIGS, *Clerk,*
By R. J. MEIGS No. 3,
Ass't Clerk.

261 A. R. EXHIBIT No. 3. (Signed) Henry R. Elliot, Examiner.

To the supreme court of the District of Columbia, in chancery:

Brooke Mackall, Junior, of the city of Washington, in the District of Columbia, brings this bill of complaint against William B. Todd, of the same place; William H. Downing, of the State of Maryland, and the Mayor, Board of Aldermen, and Board of Common Council of the City of Washington.

And thereupon your orator shews that the said corporation by an ordinance passed on the 8th of June, 1865, authorized the construction of a sewer in said city on 14th street west & from N street north to the north side of the canal, and to defray the expense authorized a special assessment in tax to be imposed on all the lots and parts of lot- on said 14th street between the said points, except that where the sewer fronted on the crossings of avenues, streets, or public alleys. The expense of such portions was to be paid by the second ward of said city, within the limits of which ward said 14th street lies; and your orator files herewith a copy of said ordi-
262 nance, marked "B. M. Exhibit No. 1," and prays the same may be taken as part hereof.

That in pursuance of said ordinance the mayor of said corporation, Richard Wallach, entered into a contract with the said Wil-

liam H. Downing for the construction of said sewer according to certain specifications made part of said contract and upon the terms of payment therein set forth, & your orator files herewith a copy of said contract and specifications, marked "B. M. Exhibit No. 2," and prays the same may be taken as part hereof.

Your orator further shews, on information and belief, that the execution of said contract was begun about the 10th day of July, 1865; that said contractor failed to construct said sewer according to said contract and specifications in respect both of the character of the work and the materials; that bats and shattered arch bricks were freely used in said construction, and in the lateral culverts more of them were used than whole bricks; that instead of cement there was used ce-
ment mixed with sand and dirt, whereby its adhesive qualities
263 were almost entirely destroyed; that the bottom of the sewer and the lower sides were laid dry, without either cement or mortar; that said sewer was built in sections from twelve to fifteen feet, & in many cases the bottoms of said sections were not laid upon any uniform line, but that some sloped upwards and others downwards; and your orator charges that in the particulars before mentioned, as well as in others, the said contract was deliberately and fraudulently violated by the said contractor.

Your orator further shews, on information and belief, that in consequence of the above and other imperfections in the construction of said sewer the same was, from time to time during the progress of construction, protested against by said corporation, through its duly authorized agents, and that the execution of said contract was at no time approved by said corporation, nor was said sewer at any time accepted as constructed in conformity with said contract and specifi-
cations, but that such acceptance was refused by said corpora-
264 tion, and that the tax certificates mentioned in said contract as the means whereby compensation was in part to be made to said contractor were for a long time withheld by the said corporation upon the ground of violation of said contract by the said contractor, and when delivered to said contractor was so delivered subject to the agreement in understanding hereinafter mentioned.

Your orator further shews that said sewer was so negligently and imperfectly constructed that, owing thereto, and at about the time of its completion, in October, 1866, a breach occurred therein, at the junction of F street north, about twenty feet in length, and at the same time another breach occurred therein, at the junction of H street north, of about the same length; that said breaches were the result of the arch and sides of said sewer giving way from bad workmanship and materials, and that when said breaches occurred said 14th street sank and fell to the extent of the same, and so remained until repaired at great expense by said corporation.

265 And your orator further shews, on information and belief, that the imperfections in the construction of said sewer, save so far as repaired as aforesaid, still continue, and that from recent examinations it is clear that said sewer, to answer the purposes of its construction, must be uncovered and substantially rebuilt, the

cost whereof will fall upon your orator and other real estate proprietors on said 14th street.

Your orator further shews, on information and belief, that, while said corporation protested against and refused to accept said sewer as constructed in conformity with the provisions of said contract and specifications, yet that the said Richard Wallach, then mayor of said corporation, was, for reasons unknown to your orator, induced to allow the amount of the special tax authorized by said ordinance to be estimated and assessed and tax certificates to be issued for the portions of the contract price, payable, respectively, by the different real estate proprietors on said 14th street, which tax certifi-
266 cates were delivered to the said contractor or upon his order.

Your orator further shews the sum of $598.43 was assessed for the pretended construction of said sewer upon lot No. 7, in square No. 223, whereof your orator was and is the proprietor, and a tax certificate or certificates issued therefor, and that your orator, having refused to pay the said tax, the said corporation, on or about the 26th of June, 1867, sold or pretended to sell the said property, as well for said tax as for other taxes charged against the same, at which sale the said William B. Todd became the purchaser of said lot for the amount of taxes and expenses charged against the same; that within two years from said sale your orator tendered to the proper officer of said corporation all taxes for which the said property was charged, save only the tax charged aforesaid for said sewer, together with all interest and expenses, and claimed the right
267 to redeem the said lot; that said officer refused to accept as a redemption of said lot the amount so tendered, and further refused to allow any redemption thereof, save upon the full payment of all taxes charged against the same, including the tax for said sewer, with interest and expenses, and that, the said two years having now expired, your orator believes and charges that the said corporation will, through its present mayor, execute and deliver to the said William B. Todd a deed for the said property, unless restrained by this court.

And your orator is advised that the issue of said certificates by the said Richard Wallach, the mayor, whilst the said corporation refused to accept the said sewer and charged the said contractor with culpable negligence and fraud in the performance of his said contract, as your orators avers on information and belief was the case, was illegal and void, and that the rights and interests of real estate proprietors could not thereby be indemnified. But
268 your orator is informed and believes & so charges that said special tax for said sewer was assessed and tax certificates issued to said contractor and by him accepted upon the distinct agreement that thereby the said corporation should not be held to accept the said sewer, nor should the rights and interests of your orator, or other real estate proprietors charged with said tax, be in anywise affected, but that said proprietors should be at liberty to contest the validity of said assessment and the issue of said certificates as if said assessment and issue had not been made.

Your orator further shows, on information and belief, that the said W. H. Downing has already been largely overpaid the fair value of the work and materials done and supplied in the construction of said sewer, the whole of said special tax having been paid except from $3,500 to $4,000.

269 Your orator further shows that the price to be charged for said sewer, as well as the assessment of the tax to pay for the same, were not fixed by said corporation, acting through its legislative department, but were delegated to the mayor and other agents of said corporation, and that said price was fixed & tax assessed & certificates issued without notice to the real estate proprietors affected thereby or any opportunity offered to contest the same, and your orator is advised that such delegation of power by the said corporation was and is null and void.

Your orator further shews that he is in the possession of the lot of ground above mentioned, and hence cannot contest at law the right of the said W. B. Todd to the said possession in the event of his receiving a deed for said property from said corporation; and, further, that the issuing of said deed will be a cloud upon the title of your orator.

270 To the end that the said William B. Todd, William H. Downing, and the said mayor, board of aldermen, and board of common council may be made defendants hereto and may answer the premises, and that the said corporatian may be enjoined and prohibited from executing or delivering a deed for lot No. 7, in square No. 223, by reason of the alleged sale thereof for taxes on or about the 26th day of June, 1867, and the said William B. Todd may be enjoined and prohibited from applying for or accepting said deed, and that the said special tax on account of said sewer may be decreed to be null and void, and that William H. Downing may be enjoined and prohibited from collecting the tax certificate or certificates issued against said lot on account of the pretended construction of said sewer, and from setting up or maintaining any claim, whether against your orator on said property or said account, and that your orator may have all further proper relief—

271 May it please the court to grant subpœnas against said defendants commanding, &c.; and also writs of injunction enjoining as aforesaid; and as in duty, &c.

(Signed) B. MACKALL, JR.

W. D. DAVIDGE,
Sol'r for Complainant.

CITY OF WASHINGTON, }
District of Columbia, } *ss:*

Before me, clerk of the supreme court in and for the District of Columbia, personally appeared, this 28th day of June, 1869, Brooke Mackall, Junior, Esq., whose name is signed to the foregoing bill, and made oath in due form of law that the matters and things therein set forth are true, to the best of his knowledge and belief.

(Signed) R. J. MEIGS, *Clk.*

A true copy.
Test:
[SEAL.] (Signed) R. J. MEIGS, *Clerk*,
By R. J. MEIGS No. 3, *Ass't Clerk*.

272 A. R. EXHIBIT No. 4. (Signed) Henry R. Elliott, Examiner.

In the Supreme Court of the District of Columbia. In Equity.

MATTHEW G. EMORY, GEORGE H. PLANT, *et al.*
ats.
BROOK MACKALL, Jr. } No. —.

The joint and separate answer of Alfred and T. F. Richards, W. H. Owen, and Thomas Wilson to the bill of complaint against them and others in the above-entitled cause exhibited.

These respondents, saving to themselves all manner of exception to the said bill, &c., for answer thereto say as follows:

That it is true, as stated in said bill, that they have recovered judgments against the said complainant on the law side of your honorable court, and that they have ordered writs of *fieri facias* to be issued, which have accordingly been issued and are now in the hands of the defendant, Alexander Sharp, the marshal of the District of Columbia, who has, under said writs, levied upon lot 7, in square 223, and improvements, in the said city of Washing-
273 ton; that it is not true as alleged in said bill of complaint that the said complainant has not any legal title to said property so levied on, and has never received any conveyance therefor, but to the contrary thereof respondents aver that the said property does belong to the said complainant, who is the owner of the legal title thereto, and that the same has been duly conveyed to the said complainant by a deed in due form executed and delivered to him by the corporate authorities of Washington city, by which said authorities the same was sold for taxes on the 22d May, 1862, to one A. Hyde, who afterwards assigned his certificate of purchase to complainant, who under said assignment became the recipient of a deed therefor on the 6th of October, 1865; and respondents, further answering, say that their lien as judgment creditors covers the entire of said lot 7, in square 223, and that accordingly the said
274 marshal, under their said judgments and the writs of execution issued thereon, has levied upon the whole of said lot, but respondents, being only desirous to make their money, are willing, should a sum sufficient for that purpose be realized from the sale of the part of said lot 7, in square 223, upon which the building is erected and appurtenant thereto, that such sale shall cease and that no other portion of said lot shall be sold.

And having answered, &c., they pray to be hence dismissed, &c.
(Signed) THOMAS WILSON, *P. P.*

KENNEDY & WEBB, *Sol'r.*

DISTRICT OF COLUMBIA, *County of Washington,* } *To wit:*

I do solemnly swear that I have read the answer by me subscribed and know the contents thereof, and that the facts therein
275 stated upon my personal knowledge are true, and that the facts stated therein upon information and belief I believe to be true.

(Signed) THOMAS WILSON.

Subscribed & sworn to before me this 20th day of September, 1869.

(Signed) R. J. MEIGS, *Clerk.*

A true copy.
Test: (Signed) R. J. MEIGS, *Clerk,*
By R. J. MEIGS, No. 3,
Ass't Clerk.

Endorsement: No. 1774. Eq. doc. 9. Brooke Mackall, Jr., *v.* Matthew G. Emory, George H. Plant, & others. Copy. Answer of A. & T. A. Richards, Owen & Wilson. Please file. Kennedy & Webb, for def'ts.

276 A. R. EXHIBIT No. 5. (Signed) Henry R. Elliott, Examiner

In the Supreme Court of the District of Columbia. In Equity.

MATTHEW G. EMORY, GEORGE H. PLANT, & Others *ats.* BROOKE MACKALL, Jr. } No. —.

The separate answer of George H. Plant to the bill of complaint against him and others in the above cause exhibited.

This respondent, saving and reserving to himself all manner of exceptions, &c., to said bill, for answer thereto, says that he is one of the parties who have recovered judgments on the law side of your honorable court against the complainant, and that his said judgment was recovered in pursuance of the act of Congress approved Feb. 2d, 1859, affording a lien of mechanics and material men for work and materials furnished in the construction and repair of buildings in the District of Columbia; that he has caused a
277 writ of *fieri facias* to be issued upon his said judgment, and that the marshal of the District of Columbia, the said defendant, Alexander Sharp, has levied upon part of lot 7, in square 223, in the city of Washington, and the improvements thereon, as is alleged in said bill of complaint; that it is not true that said complainant has no legal title to said part of lot and has never received any conveyance of the same, but, to the contrary, respondent avers that the said complainant holds the said lot under a conveyance from the corporate authorities of the city of Washington, dated the 6th of October, 1865, and which said deed the complainant has purposely neglected to have recorded among the land records of the District of

Columbia; that the said complainant, at the time he obtained from respondent the materials furnished by him to said building and for which his said lien was obtained, represented himself to be
278 the owner of said building and has ever so represented himself, and upon the faith of such representations obtained from respondent the materials; that it is not true, as alleged in said bill, that the said building cost in its erection $10,000, or nearly that sum, or that said lot is worth $30,000, or that the whole of said property is worth far more than the judgments, &c., but your respondent is advised, to the contrary, that the said property is encumbered to the entire extent of its value, and so avers and charges; and respondent, further answering, says that there is no mistake nor impossibility in the description of the said part of lot and improvements as set forth in the said advertisement, a copy of which is filed as an exhibit to said bill, but, to the contrary thereof, avers that the same is correct in every particular, being in exact accordance with the provisions of the said act of Congress of Feb. 2, 1859, and that it is not true that the said lot fronts on New York avenue, as is alleged in
279 said bill; and respondent further says that it is now many years since the indebtedness upon which said judgment is based was incurred; that said complainant has had every indulgence and has so far failed to pay any part thereof, and that respondent believes said complainant will never pay the same unless compelled so to do; and, having answered, he prays to be hence dismissed, &c.

GEORGE H. PLANT.

KENNEDY & WEBB,
Sol'r- for Def't.

DISTRICT OF COLUMBIA, } *To wit:*
County of Washington, }

I do solemnly swear that I have heard read the answer by me subscribed and know the contents thereof, and that the facts therein stated upon my personal knowledge are true, and that the facts therein stated upon information and belief I believe to be true.

R. J. MEIGS, *Clerk.*

A true copy.

Test: (Signed) R. J. MEIGS, *Clerk,*
By R. J. MEIGS No. 3,
Ass't Clerk.

280 Endorsement: No. 1774. Eq. doc. 9. Brooke Mackall, Jr., *v.* Matthew G. Emory, George H. Plant, & others. Copy. Answer of Plant. Please file. Kennedy & Webb, for def't.

281 A. R. EXHIBIT No. 6. (Signed) Henry R. Elliott, Examiner.

In the Supreme Court of the District of Columbia. In Equity.

GEORGE H. PLANT, MATTHEW G. EMORY, & Others
ats.
BROOKE MACKALL, Jr. } No. —.

The separate answer of Matthew G. Emory to the bill of complaint against him and others in the above cause exhibited respectfully shows, saving and reserving to himself all manner of exceptions, &c., as follows: That it is true, as set forth in said bill, that he has recovered on the law side of your honorable court a judgment against the complainant, in pursuance of the provision of the act of Congress approved on the 2nd of February, 1859, affording a lien to mechanics and material men, &c., and under his said judgment he has sued out a writ of *fieri facias*, which the marshal of
the District of Columbia, the said defendant, Alexander
282 Sharp, has levied upon part of lot 7, in square 223, and improvements, in the city of Washington, and that said Sharp has advertised the said part of lot for sale and is about to sell the same in accordance with the provisions of the advertisement, a copy of which is filed with said bill of complaint as an exhibit; that it is not true, as stated in said bill, that the said property has never been conveyed to complainant, and that he has not any legal title thereto, but, to the contrary thereof, respondent avers that the said lot 7, in square 223, and improvements was sold for taxes on the 22nd of May, 1862, to one Anthony Hyde, who assigned his said purchase to the complainant, and that on the 6th of October, 1865, a deed for the same was made by the corporate authorities to the complainant in due form and was duly delivered to him, as will
appear from a paper filed herewith & marked M. E. No. 1;
283 and the respondent, further answering, avers that before he furnished to said complainant the materials that were used by him in the erection of the building on said part of lot the said complainant exhibited to said respondent a deed conveying the said part of lot to him, said complainant, and by so doing induced this respondent to furnish said materials & perform the labor in, upon, and about the erection of the said building, which labor and materials make up the account for which respondent's judgment was recovered as aforesaid; that said respondent believes, and believing so avers and charges, that the said complainant was, at the time respondent made the contract with him, complainant, upon which respondent performed the labor upon and furnished the materials for the construction of the building upon said part of lot 7, the owner
of the said building, & so represented himself to be and has
284 ever since continued so to represent himself; and this respondent, further answering, says that it is not true that the said building cost in its erection the sum of $10,000 or anywhere near that sum, or that the completion of the same was prevented by its seizure by the Government, or that the same was ever so seized

or has ever been appropriated to Government purposes, or that the said lot is of the value of $30,000, as is alleged in the said bill of complaint; and respondent, further answering, denies that there is any error in the description contained in the advertisement of the sale to be made by the said marshal, a copy of which is filed as an exhibit, but, to the contrary thereof, avers that the said officer has levied, as he had a right to do under the 8th section of the said act of Congress approved the 2nd of February, 1859, entitled An act to enforce mechanics' liens, &c., "upon a space of ground equal
285 to the front of the building and extending to the depth of the lot on which it is erected;" that it is not true that said lot fronts on New York avenue; that it is a corner lot, and that complainant, by making the front of the building erected by him on said 14th street, has made that the front of said lot to all intents and purposes; that the space of ground occupied by the front of said building on said 14th street is forty-four feet, about, and that the said marshal has levied on a space equal to that front running back to the rear of the said lot; and, further answering, the respondent says that it is now over six years since the said materials and labor were furnished by him to said complainant, and that he has given said complainant every indulgence, but has not, so far, received one cent of his, respondent's, claim, and denies that the said property so levied on as aforesaid is worth far more than the incumbrances which he, respondent, is advised exist thereon; &,
286 having answered, &c., he begs to be hence dismissed, &c.

M. G. EMORY.

KENNEDY & WEBB, *Sol'r-*.

DISTRICT OF COLUMBIA, } *To wit:*
County of Washington, }

I do solemnly swear that I have read the answer by me subscribed, and know the contents thereof, and that the facts stated therein upon my personal knowledge are true, and that the facts therein stated upon information and belief I believe to be true.

M. G. EMORY.

Subscribed & sworn to before — this 21 Sept., 1869.

R. J. MEIGS, *Cl'k.*

A true copy.
Test: (Signed) R. J. MEIGS, *Clerk,*
[SEAL.] By R. J. MEIGS No. 3,
Ass't Clerk.

Endorsement: No. 1774. Eq. doc. 9. Brooke Mackall, Jr., *v.* Matthew G. Emory, George H. Plant, & others. Answer of Emory. Please file. Kennedy & Webb, for defendant.

287 A. R. EXHIBIT No. 7. (Signed) Henry R. Elliott, Examiner.

In the Supreme Court of the District of Columbia, Holding a Special Term in Equity.

BROOKE MACKALL,
vs.
ALFRED RICHARDS *et al.* } No. 8118. Equity Doc. 21.

It is hereby stipulated and agreed by and between the counsel for complainant and defendants in the above-entitled cause that the depositions of Anthony Hyde, Francis Wheatly, William Linton, and A. M. Gangewer filed therein, together with the several papers composing Exhibit A, annexed to the said deposition of the said A. M. Gangewer, which depositions were heretofore taken in cause No. 2373, equity docket 11, of this court, wherein Brooke Mackall, Junior, and Brooke Mackall, Senior, were complainants and Alfred Richards and others defendants, may be read at the hearing of the present cause, and may be considered in evidence therein in every particular as if the same had been in due form taken and filed in
288 this cause at this time originally, it being understood that the deed from the mayor, board of aldermen, and board of common council of the city of Washington to Brooke Mackall, Junior, bearing date the 5th day of October, 1865, conveying lot seven, in square two hundred and twenty-three, is objected to by the counsel for complainant, Brooke Mackall, Junior, as incompetent proof of such deed and of the conveyance thereunder.

(Signed) W. B. WEBB,
Sol. for A. Richards et al.

(Signed) W. WILLOUGHBY.
Sol. for Comp't, B. Mackall.

289 *Deposition of Antony Hyde for Complainants.*

ANTONY HYDE, being of lawful age and being by me first duly sworn to tell the truth, the whole truth, and nothing but the truth touching the matter in controversy, deposes and says:

First general interrogatory by the commissioner. Please to state your name, age, residence during the past year, and your occupation.

Answer. My name is Antony Hyde; my age is sixty-two; my residence the past year has been Georgetown, D. C.; my occupation is a lawyer by profession, but an agent by practice; I have been agent of W. W. Corcoran for nearly a quarter of a century.

In response to interrogatories by THOMAS WILSON, Esq., counsel for complainants, the witness says:

I am acquainted with Brooke Mackall, Senior and Junior, and I have known young Brooke Mackall all his life and the old man for thirty or forty years.

290 Q. What position or relation existed between you and Mr. Corcoran, with reference to business?

A. I have been his confidential agent since 1848.

Q. State whether or not any business was prosecuted between you, acting for Mr. Corcoran, and Brooke Mackall with reference to a piece of property on the corner of New York avenue and 14th streets in this city?

A. I had the management of the sale of Mr. Corcoran's ½ interest in that square, lot 7, square 223, and, as Mr. Corcoran's agent, I managed a sale of that.

Q. To whom did you sell it?

A. Brooke Mackall, Senior.

Q. When?

A. I will have to refer to my book for that. (Witness, after referring to his book, said:) 19 November, 1851.

Q. What did you sell to him at that time?

A. Mr. Corcoran's undivided one-half interest in lot 7 and square 223.

291 Q. Who owned the other half, if you know?

(Objected to by Mr. Hine on the ground of being incompetent.)

A. To the best of my knowledge, Judge Dunlop one fourth and John A. Smith the other fourth.

Q. How was the purchase made and how were the payments made, if at all?

A. The purchase was made from Mr. Corcoran himself. Mr. Mackall, Senior, gave a note for the purchase-money.

Q. When and by whom was the deed made, if at all?

A. I can give you the date exactly, if you want it.

COUNSEL: That is not material—the exact date.

A. The deed was dated about the time of the sale; I presume on the day of the sale.

Q. When was it delivered, if at all?

A. It was sent to the mail on the 22nd of November, 1865.

Q. To whom?

A. To Brooke Mackall, Senior.

Q. State, if you can, the reason why it was not delivered to
292 him sooner than that.

(Objected to by Mr. Hine as incompetent.)

A. He refused to take it. There was an account of taxes against the property on Corcoran & Riggs' books, and Mr. Corcoran refused to deliver the deed until he paid that account. He refused to take it, and consequently the deed remained in my hands from 1852 till 1865—13 years.

Q. Was the account finally paid?

A. Yes, sir.

Q. And thereupon you delivered the deed—that is, you sent the deed to him through the mail?

A. No; the account was paid by Brooke, Junior.

Q. And then what did you do with the deed?

A. I still kept the deed.

Q. When did Brook, Junior, pay the account?

A. I do not know without looking at my books. If necessary, I will refer to the book-.

Q. About how long was it before you sent the deed to Brook, Senior?

293 A. I sent it on the 22nd of November, 1865.

Q. About how long before that was it Brook, Junior, paid this account?

A. The 13th of May, 1864.

Q. Then you sent the deed to Brook, Senior, at the time you have stated?

A. This is the cectificate I gave Mr. Mackall, and told him this: "I hand you the foregoing and shall be glad if you can get such a reply as will justify Mr. Corcoran in making the conveyance. I am not sufficiently advised to judge for myself or to advise him, but am anxious to have the matter settled." That paper was signed by myself and handed to Brook Mackall, Senior. The letter of transmission is as follows:

"NOVEMBER 22, 1865.

"To Brook Mackall, Senior:

"Having received no reply to the certificate given, at your request, by Mr. Hyde on the 6th of October last, and not wishing to hold the same longer, I herewith hand you the deed from myself to you, dated March 1st, 1852, for an undivided moiety of lot
294 7, in square 223. This deed, as you are aware, was held by me for the settlement of an account against the lot for moneys paid by Corcoran & Riggs for taxes. This debt was paid in full on the 13th May, 1864, since which date the last deed was at your disposal, but its acceptance declined; and, having no further claim on the property and being unwilling to hold it longer, it is herewith enclosed.

"Respectfully yours, W. W. CORCORAN."

Q. Please read the certificate which you gave along with the letter first read.

(Objected to by Mr. Hine as incompetent.)

A. On the 19th of November, 1851, W. W. Corcoran, sold to Brooke Mackall a moiety of lot 7, in square 223, for a certain sum and gave him a memorandum: "On the full payment of the said note and interest I am to execute and deliver him a deed conveying all my right, title, and interest in and to said undivided one-half." On the 1st of March, 1852, said note and interest having been
295 paid, Mr. Corcoran executed a deed to said Mackall, but declined to deliver it until the fulfillment of the alleged promise to pay a small balance for a pavement then due Corcoran & Riggs, as agents of the owners, and standing on their books against the owners. This sum has been paid, and Mr. Mackall asks, in lieu of the delivery of the deed as aforesaid to himself, to have the property conveyed to Brook Mackall, Junior, he being a party to the same.

Query. Have there been any proceedings in the interval between the date of the original purchase and the present that would make it unlawful for Mr. Corcoran to convey to a third party at Mr. Mackall's request. In other words, can Mr. C. safely so convey, and not become liable therefor, to any third party or other party than the immediate grantee.

Washington, October 6th, 1865.

A. HYDE.

(Objected to by Mr. Hine on the ground of being incompetent.)

296 WITNESS: I made this certificate. I was seeking some justification for Mr. Corcoran.

No cross-examination.

Second general interrogatory by the commissioner. Do you know of any other matter relative to the cause in question? If you do, state it.

Answer. No, sir.

A. HYDE.

Subscribed and sworn to before me this 11th day of October, 1872.

JAS. O. CLEPHANE,
U. S. Commissioner and Examiner in Chancery.

Deposition of Francis Wheatley for Complainants.

FRANCIS WHEATLEY, being of lawful age and being by me first duly sworn to tell the truth, the whole truth, and nothing but the truth touching the matter in controversy, deposes and says:

First general interrogatory by the commissioner. Please to state your name, age, residence during the past year, and your occupation.

297 Answer. My name is Francis Wheatley; my age is sixty-three; my residence for the past year has been Georgetown, D. C.; my occupation within the last three or five years has been the lumber business.

I- response to interrogatories by THOMAS WILSON, Esq., counsel for complainants, the witness says:

Q. Did you or not furnish any lumber for the erection of a house on the lot upon the corner of New York avenue and 14th street, in this city?

A. Yes, sir.

Q. State for whom you furnished it. Who requested it or ordered or made the contract?

A. There was not any contract specially made. Mr. Brooke Mackall, Junior, had dealt with me. He dealt with me for the building of this house here on the corner, but it failed before it was finished.

Q. Did you furnish the lumber?

A. Yes, sir. I think, if I recollect right, that I was alone in business at that time.

Q. Who engaged the lumber from you or bought it?

A. Mr. Brooke Mackall, Junior.

298 Q. Is this the same lumber for which you filed a lien and have commenced suit in the District court?

A. The same lumber.

Q. Are you the Francis Wheatley that is a party to this suit?

A. Unless I am made so I am not a party.

Q. It is your name?

A. Yes, sir.

Q. You are the same man who got the judgment?

A. Yes, sir.

Q. When you furnished this lumber, or about that time, did you have any talk with Mr. Mackall, Junior, as to who was the owner of the property?

A. I did before I furnished it.

Q. What representation did he make with regard to that?

(Objected to by Mr. Hine on the ground of being incompetent.)

A. He told me the lot was his.

Cross-examination by Mr. HINE:

Q. Are you a voluntary party to this suit?

299 A. I was to the suit in which I considered my claim secure.

Q. Did you authorize the institution of this equity suit?

(Objected to by Mr. Wilson.)

A. I did not; I did not direct it.

Q. When did you first know of its institution?

A. Not until I got the notice.

Q. About when?

(Objected to by Mr. Wilson.)

A. Now, I could not tell you. I can tell about the time, but could not tell the precise time.

Q. What amount of lumber did you furnish for that house?

A. Just the amount in the bill. I could not tell you exactly now, from memory, the amount.

Re-examination by Mr. WILSON:

Q. Who was your attorney with reference to this collection against Mr. Mackall?

A. William Redden, of Georgetown, was my attorney in the first case. I never — any other—not in this case. That is my recollection, & I am sure at that time I had no other. He has died since.

Q. Who has been your attorney since the death of Mr. Redden?

300 A. Fred. W. Jones.

Q. Who has been your attorney with reference to this case?

A. In regard to this case, I considered that my claim was settled as good.

Q. No; but the collection against Brook Mackall; that is what I mean. Who was your attorney in that case, with reference to that collection, since the death of Mr. Redden?

(Objected to by Mr. Hine.)

A. I could not tell you whether Mr. Richards or I directed the property to be sold under the judgment. It required no counsel particularly to direct the property to be sold.

Q. Did Mr. Richards have any authority to act for you in the matter?

(Objected to by Mr. Hine.)

A. None in the world.

Recross-examination by Mr. HINE:

Q. Mr. Brook Mackall, Junior, has offered repeatedly to settle for the lumber by giving other property?

A. I think he did. I think on one occasion he invited me to go and look at some property, but I did not go.

301 Q. The building you speak — was never completed?

A. No; not until quite recently.

Second general interrogatory by the commissioner. Do you know of any other matter relative to the cause in question? If you do, state it.

Answer. ——.

FRANCIS WHEATLEY.

Subscribed and sworn to before me this 11th day of October, 1872.

JAS. O. CLEPHANE,
U. S. Commissioner and Examiner in Chancery.

Deposition of A. M. Gangewer for Complainants.

A. M. GANGEWER, being of lawful age, and being by me first duly sworn to tell the truth, the whole truth, and nothing but the truth touching the matter in controversy, deposes and says:

First general interrogatory by the commissioner. Please state your name, age, residence during the past year, and your occupation.

Answer. My name is A. M. Gangewer; my age is fifty-
302 four; my residence the past year has been Washington; my position is chief clerk, Third Auditor's office.

In response to interrogatories by THOMAS WILSON, counsel for complainants, the witness says:

Q. Do you know whether or not there was a claim made by Mr. Brook Mackall, Junior, before your office to recover rent for a lot of ground on the corner of 14th street and New York avenue, in this city?

A. I know there was a settlement made in favor of Brooke Mackall, Junior, for the use and occupation of property situated at the southwesterly corner of the intersection of New York avenue and 14th street, in the city of Washington, District of Columbia.

Q. Have you any of the original papers of that case?

A. The original papers are on file with the statement.

Q. I show these to you (handing the witness a package of papers), and ask you whether or not the bundle of papers are or are not original papers?

A. Yes, sir; they are.

303 Q. These original papers, as I understand you, belong to and are on file in this office as a part of the claim of Brooke Mackall, Jr.

A. Yes, sir.

Q. Are or are not these papers allowed by the rules of the office and the laws of the United States to go out of the office & be removed from its care and jurisdiction?

(Objected to by Mr. Hine.)

A. They are not.

Q. Have you had copies of these made, or not?

A. Yes, sir; I have.

Q. Have you the copies with you?

A. Yes, sir; the copies in this package marked "Ex. A."

(Mr. Wilson offers said package of papers in evidence, and they are made a part hereof and marked "Exhibit A.")

(Mr. Hine objects to the introduction of these papers—first, because they are not proof; second, because the original petition upon its face shows that it was prepared by the present counsel for the plaintiffs in this case, and, third, because they are immaterial.)

304 Q. Are you acquainted with the signature or handwriting of Mr. Brooke Mackall, either Senior or Junior?

A. I never saw him write.

Cross-examination by Mr. HINE:

Q. Will you examine the original petition and state in whose handwriting it is?

A. I don't know in whose handwriting it is.

Q. Who were the attorneys who presented that petition?

A. Corwin, Owen and Wilson.

Q. Was Thomas Wilson a partner in that firm?

A. I understand that he was one of the partners in that firm.

Second general interrogatory. Do you know of any other matter relative to the cause in question? If you do, state it.

Answer. No, sir.

A. M. GANGEWER.

Subscribed and sworn to before me this 11th day of October, 1872.

JAS. O. CLEPHANE,
U. S. Commissioner & Examiner in Chancery.

305 *Deposition of William Linton for Complainants.*

WILLIAM LINTON, being of lawful age and being by me first duly sworn to tell the truth, the whole truth, and nothing but the truth touching the matter in controversy, deposes and says:

First general interrogatory by the commissioner. Please to state your name, age, residence during the last year, and your occupation.

Answer. My name is William Linton; my age is forty-seven; my residence the past year has been Washington; my occupation is clerk in First Comptroller's office.

In response to interrogatories by THOMAS WILSON, Esq., counsel for complainants, the witness says:

I am acquainted with Mr. Brooke Mackall, Senior and Junior; I have been acquainted with Mr. Brooke Mackall, Senior, for 12 or 15 years, and with Mr. Brooke Mackall, Jr., for some several years.

Q. Are you not acquainted with the handwriting and signature of either of them?

306 A. I am with that of Brook Mackall, Senior.

Q. What opportunities have you had for becoming acquainted with his handwriting and signature?

A. From having been in the same room with him as a clerk and seeing him write daily letters, or making entries in books and records of the office.

Q. For how many years, about?

A. From December, 1867, to April, 1869.

Q. Have you or not, frequently or otherwise, seen him write?

A. Yes, sir; almost daily during that period.

Q. Are you acquainted with his signature?

A. I am.

Q. Do you know the signature of Brooke Mackall, Jr.?

A. I do not.

Q. Look at this paper, copy of the deed from the city of Washington to Brooke Mackall, Junior, marked "Number 4 of Exhibit A," and at the signature upon the back thereof, which purports to be Brooke Mackall's, and say whether or not it is a genuine signature.

307 (Mr. Hine objects to the introduction of the paper or the copy of it in evidence as a proof of the signature.)

A. Yes, sir; the body of it was written by a gentleman by the name of Brand, but the signature "B. Mackall, notary public," and certificate of its being a true copy are in the handwriting of Brook Mackall, Senior.

Q. Look at paper marked "Number 5 of Exhibit A"—look at the signature which purports to be "B. Mackall"—and say whether or not it is in the genuine handwriting of Brook Mackall, Senior.

(Mr. Hine objects to the introduction of the paper.)

A. That is Mr. Mackall's handwriting and signature; the name "B. Mackall" and the jurat are in the handwriting of B. Mackall, Senior; the body of the paper is in the handwriting of Mr. Brand.

Q. Look at number 6 of Exhibit A and say whether or not any portion of it is in the handwriting of Brooke Mackall, Senior?

A. Yes, sir; the whole of it.

308 Q. Look at the paper marked "Number 9 of Exhibit A" and say whether or not any, and, if so, what, portion of it is in the handwriting of Brooke Mackall, Senior?

A. The signature and jurat are in his handwriting.

Q. Look at paper marked "Number 10 of Exhibit A" and say whether it or any portion of it is in — handwriting?

A. The signature and jurat are in his handwriting.

Q. Look at paper marked "11 of Exhibit A" and say whether it or any portion of it is in the handwriting of Brook Mackall, Senior?

A. The signature and jurat are in his handwriting.

Q. Look at paper marked "Number 12 of Exhibit A" and say whether it or any portion thereof is in the handwriting of Brook Mackall, Senior?

A. The whole of it is, I think, and the signature also.

Q. Look at paper marked "13 of Exhibit A" and say whether it or any portion of it is in the handwriting of Brook Mackall, Senior?

A. Yes, sir; all of it.

309 Q. Look at the paper marked "Number 14" and say whether any portion of that is in the handwriting of Brooke Mackall, Senior?

A. Yes, sir; just the same; that is all his except the signature of Brooke Mackall, Junior, thereto.

Q. Look at paper marked "Number 15" and say whether it or any portion of it is in the handwriting of Brooke Mackall, Senior?

A. Yes, sir; the signature and jurat are.

Q. Look at the paper marked "Number 16" and say whether or not any portion of it is in his handwriting?

A. The body and signature are his.

Q. Look at paper number 2 of Exhibit A.

A. The body of it and the signature thereto are in his handwriting.

Cross-examination by Mr. HINE:

Q. Look at this paper (handing witness the original petition) and state what it is.

A. I do not know in whose handwriting it is; it is a petition of Mr. Mackall, Junior.

Second general interrogatory by the commissioner. Do you
310 know of any other matter relative to the cause in question? If you do, state it.

Answer. No, sir.

W. LINTON.

Subscribed and sworn to before me this 11th day of October, 1872.
JAS. O. CLEPHANE,
U. S. Commissioner and Examiner in Chancery.

Exhibits to Compl't's Testimony. Filed Mar. 6, '73.

TREASURY DEPARTMENT.

Be it remembered that Allan Rutherford, Esq., who certified the annexed copies, is now, and was at the time of doing so, Third Auditor of the Treasury Dep't, and that full faith and credit are due to his official attestations.

In testimony whereof I, George S. Boutwell, Secretary of the Treasury of the United States, have hereunto subscribed my name and caused to be affixed the seal of this Department, at the city of Washington, this 17th day of October, in the year of our Lord 1872.
GEO. S. BOUTWELL,
Secretary of the Treasury.

311 . I certify that the attached papers are true and correct copies of the originals on file in this office with sett #5269 of 1867.
ALLAN RUTHERFORD, *Auditor.*

TREASURY DEPARTMENT,
THIRD AUDITOR'S OFFICE, *October 16th*, 1872.

The petition of B. Mackall, Jr., respectfully represents:

That he is a citizen of Washington, D. C., and loyal to the United States.

That he was in December, 1863, and has ever since been, the owner of a certain piece of ground on the corner of 14th street and New York avenue, Washington city, known as lots Nos. 1, 2, 3, 4, & 5 of Mackall's subdivision of lot No. 7, in square No. 223, containing a superficial area of about fifteen thousand square feet.

That on or about the 20th December, 1863, the United States authorities took possession of the aforesaid piece of ground, and immediately commenced to erect buildings upon it for public purposes.

That the portion of the lot occupied for such purposes com-
312 prised the whole of it, except about fifteen hundred square feet, the south side of the lot, occupied by a wooden building, being about thirteen thousand five hundred square feet, but the Government has since yielded at different times, as hereinafter to be described, about three thousand five hundred feet, still retaining possession of about ten thousand square feet.

That the Government has continued in possession of said ground up to the present time, and has never paid petitioner any rent for the same.

That as soon as petitioner became aware that the Government had taken possession of his lot he made application to the War Department for the release, on the ground that he was making preparation to build upon it himself, and offering instead a neighboring lot; that he was referred to Gen. Canby, who requested him to make his application in writing, which he did; that Gen. Candy replied in

writing that the lot was needed for Government purposes,
313 and would be retained, but that in due course just compensation would be made on proof of the loyalty of the owners.

That, a short time previously to such seizure by the Government, the whole of the lot, except fifteen hundred square feet on the south side, before mentioned, was occupied by a large livery stable and its appurtenances, for which the petitioner was receiving a high rent; that the livery-stable keeper offered a greatly increased rent to be permitted to retain it, but petitioner refused because intending to rent other buildings, as hereinafter described.

That petitioner, about the first of December, 1863, had had the livery stable and its appurtenances removed and had graded the lot for the purpose of erecting an amphitheatre upon the centre and stores upon both fronts of it, for which he had been offered high rents in advance, and intended, in this manner, to occupy the whole lot, in proof of which the affidavit of Chas. A. Neagle, builder,
314 who was employed by petitioner to make plans and estimates for the builders, is herewith submitted.

That, by reason of such occupation by the Government, the petitioner was unable to build as he had contemplated or to sell his property; that, owing to the enhanced price of materials and labor, the buildings which he proposed and, as soon as he can get possession of the land, still proposes to erect will cost more than double what they would have cost if erected at the time he had at first intended, and that, on account of the circumstances above mentioned, he has been subjected to great loss.

The petitioner further represents that, on his attempting to build upon the triangular piece of ground on the extreme corner of 14th St. and New York avenue left out by the enclosure which surrounds the ground actually occupied by the Government, he was prevented from so doing by order of Col. Andrews, then acting paymaster general, as appears by the affidavit of Isaac M. Busy, then and still an employee
315 of the Government, in the pay department, and the statement of J. E. Brady, chief of examining division, pay department, herewith submitted, until September, 1864, nearly a year after the Government had taken possession, when, at the intercession of Mr. Brady, Col. Andrews was induced to permit petitioner to build upon the corner in question; but that, even when so permitted to build, the shape of this piece of ground is such as to render it comparatively useless for building purposes and greatly to lessen the value of any building put upon it; but petitioner, not anticipating the speedy close of the war, and hopeless of getting possession of the whole of his lot until that time, concluded to do the best he could with the part of it that was left to him and commenced to erect a building thereon; but, after raising it to a height of two stories, has discontinued it with the intention, as soon as the Government shall yield possession, of pulling down the south wall and extending the
316 building over the whole front of the lot on 14th St.

Petitioner has thus not only been deprived practically of the use of even this small piece of ground, but will be at the expense

of pulling down a brick wall of considerable height at the risk of the safety of his building.

The petitioner further says that during the occupancy of his lot by the Government he has been paying a heavy tax to the corporation, and expects shortly to be further assessed in a large amount for a sewer & pavement on 14th street.

He also respectfully submits that this occupancy by the Government of his most valuable property has been an especial hardship to him, since, most of his property being in unproductive real estate, he had expected to realize immediately & largely from this particular lot in order to enable him to carry on his business; and since, also, the Government has occupied other lots of his without compensation, and which, though unenclosed, he had intended and expected to sell; one building in Georgetown, which
317 he was fitting up for a tavern, and from which he expected to realize one hundred dollars per month, the Government took possession of for barracks, whereby the building was damaged to the amount of at least $500, for which and for the use of the building no compensation has been received by petitioner, the Government agent offering $50, which the petitioner declined to accept as wholly inadequate; but these examples are only adduced to show that petitioner has suffered for the Government and should receive full justice in the particular case to which this petition refers.

The petitioner would respectfully refer, as a precedent, to the case of Mr. John Kyler, of this city. Mr. Kyler stated to him that he was the owner of a lot fifty feet front in the first ward near the Observatory, vacant and unenclosed, on which, soon after the commencement of the war, the Government built a stable. After the Government had occupied the lot about three years, without
318 paying rent, Mr. Kyler made application to the quartermaster general for such payment, which, on his statement that before the occupation by the Government he had intended to erect buildings upon the lot, supported by the affidavit to same effect of a builder, the quartermaster general allowed, paying him the three years' back rent, and Mr. Kyler still receives for this lot $125 per month, which is the amount he had expected for the rent of the buildings which he had proposed to erect.

The petitioner further states, in explanation of statements hereinbefore made, that the whole of his lot on the corner of 14th street and New York avenue, comprising about fifteen thousand square feet, was originally taken by the Government, except that portion on the south side occupied by a frame building and containing about fifteen hundred square feet; that the part thus taken by the Government composed about thirteen thousand five hundred square feet, which was enclosed by the Government by a fence, except the triangular corner before mentioned,
319 containing one thousand square feet, and on this corner the acting paymaster general refused to permit petitioner to build until September last, when such permission was granted, with the privilege of setting in the Government fence somewhat, so as to give a space of fifteen hundred square feet. Again, in February, 1865,

petitioner was permitted to move in the fence on the south side, so as to give him about two thousand square feet of additional space. The changes thus made leave the Government at present in possession of about one thousand square feet of ground, but it should be remembered that the fifteen hundred feet on the corner is of such a shape that the owner has been unable to make any use of it.

Wherefore the petitioner herein prays that immediate payment be made to him by the Government for the rent of the above-described property, and he claims therefor the sum of twelve hundred and twenty dollars ($1,220) per month from the 20th of December, 1863, this amount being the average of five appraisements made under oath by loyal, disinterested, and respectable citizens of this city.

The petitioner respectfully submits in support of his claim the following papers, viz:

A. Letter of B. Mackall, Jr., to Gen. Canby, Dec. 30th, 1863, asking to have his lot released.

B. Reply of Gen. Canby, Jan'y 2d, 1864.

C. Affidavit of S. T. G. Morsell that he — directed, on the 20th Dec., 1863, by the paymaster general to take possession of the whole of petitioner's lot not built upon, and other matters.

D. Affidavit of Aug. Dorsey, owner of the livery stable, as to fact of occupancy, &c.

E. Affidavit of Chas. A. Neagle, builder, that he was employed by Mackall, about Dec. 1st, 1863, to make a plan and estimate of cost of buildings which Mackall proposed to erect on the lot in question.

F. Affidavit of Isaac M. Busy, employee of pay dep't, that he was ordered by Col. Andrews to notify Mackall not to build upon the triangular corner.

321 G. Statement of J. E. Brady, chief of examining divisions pay dep't, covering same facts and others.

H. Agreement between B. Mackall and Thos. Rudderforth for rent of ground and building on south side of lot in question.

I. Agreement between same and Ireland and Hodge, successors to Rudderforth, for rent of additions to the above, the rent of whole being $150 per month.

K. Proposition — A. M. Hepburns to rent the triangular piece of ground on corner of 14th street and New York avenue, containing one thousand square feet, at $150 per month.

L. Affidavit of William Sears, builder, that on the 10th of August, 1865, he measured the lot in question, and giving amount occupied by the Government.

M. Appraisement of five competent, disinterested, and respectable citizens as to the amount of rent justly due by the Government.

N. Copy of architect's map of ground.

322 This petition is respectfully submitted.

B. MACKALL, JR.

WASHINGTON, D. C., *December 30th*, 1863.

Gen'l Edward R. S. Canby.

D'R SIR: I own a very valuable lot on the corner of New York (a piece torn from the original here) avenue & 14th street. I have made a contract — a number of stores, for which I am offered a large rent; a frame building on the south corner of this lot, which I have leased to a New York merchant at $75 per month. To my surprise I find that it has been taken forcible possession of, and that they were erecting buildings in the very centre. The lot is 151 feet on 14th street & 153 on New York avenue.

I have a lot a few steps off, 30 feet front, running back 212 feet, which would be a great relief to me if — Government would take in lieu of this. If this one is taken it will break me up. There are other lots in the neighborhood that can be got that will suit the Government better than mine.

Very respectfully, your ob't serv't,

B. MACKALL, JR.

323 *Petition for Release of Gov't of the Lot.*

GEORGETOWN, *Jan'y 17th*, 1865.

Having been called upon to estimate the damages sustained by Brook Mackall, Jr., by taking possession & occupancy of lots, Mackall's subdivision, 1, 2, 3, 4, & 5, in square 223, by the United States, in my opinion a fair rent for said ground occupied by the Government would be, according to what he now receives for a portion of said ground, twelve hundred — per month.

FRAN'S WHEATLEY.

(Copy.)

This indenture, made this sixth day of October, in the year of our Lord one thousand eight hundred and sixty-five, between the Mayor, Board of Aldermen, and Board of Common Council of the City of Washington, *at* the first part, and Brooke Mackall, Jr., of said city, of the second part, —:

Whereas the said corporation, by virtue of the powers in them vested by their charter, have from time to time laid and im-
324 posed certain annual taxes on all real and personal assessable property within the said city agreeably to the several assessments thereof, and have by sundry acts providing for the collection of such taxes enacted that whenever one or more years' taxes on real property, whether improved or unimproved, in the city of Washington shall have become due and remain unpaid, or whenever any special tax on any real property shall have become due & remain unpaid, it shall be the duty of the collector of taxes to sell such real property or so much thereof, not less than a lot, when the property on which the tax has accrued is not less than that quantity, as may be necessary to pay such taxes, with all interest, cost, and charges arising thereon, at public sale to satisfy the said corporation therefor, subject, however, to the terms, conditions, provisions, and re-

strictions as are in the said acts mentioned, first giving such notice of the time and place for the sale as said acts require; and

325 Whereas lot number seven (7) and improvements, in square number two hundred and twenty-three (223), lying and being within the said city, became chargeable as the property and in the name of W. S. Nicholls and W. W. Corcoran, with the following taxes—that is to say: Balance for the year 1860, the sum of thirty-six dollars and fifty-five cents, and for the year 1861, the sum of sixty dollars and forty-nine cents, amounting in the whole to the sum of ninety-seven dollars and four cents; and

Whereas the property before described having become liable to be sold under the act in part above quoted, William Dixon, the collector in whose hand the said taxes were placed for collection, failing to collect them in any other way, after previously given public notice for the sale by advertisement thereof, twelve successive weeks next before the day of sale, in a newspaper printed in the city of Washington, therein describing as above the said property, to whom assessed at the time of said advertisement, the said amount of

326 taxes due, and the years for which the same were due, did offer for sale at public auction, on the twenty-second day of May, A. D. 1862, all of said lot and improvements, to pay the said taxes and expenses attending the sale, when A. Hyde, being the highest bidder, became the purchaser thereof for the sum of one hundred and three dollars and forty cents, and then paid to the said collector the taxes aforesaid and the expenses attending the sale, amounting to the sum of one hundred — and forty cents, and more than two years having elapsed since the day of sale and the said property not having been redeemed as by law provided, the party of the second part, being the assignee of A. Hyde, the purchaser, as is certified to by the assignment entered on the certificate and filed in the office of the register, has become entitled to a conveyance thereof:

Now, therefor-, this indenture witnesseth: That the said Mayor and Board of Aldermen and Board of Common Council, parties

327 of the first —, in consideration of the premises and of the sum of one dollar, current money, to them in hand paid by the said party of the second part *of* or before the sealing and delivery of these presents, the receipt of which is hereby acknowledged, have granted, bargained, and sold, and by these presents do grant, bargain, and sell, unto the said party of the second part, his heirs and assigns, forever all the said hereinbefore-described lot, number seven (7), and improvements, in square number two hundred twenty-three (223), with the appurtenances; to have and to hold the said premises, with the appurtenances, unto the said party of the second part, his heirs and assigns, forever, to his and their use.

In testimony whereof the mayor of said city hath hereto set his hand and caused the seal of the said corporation to be affixed on the day and year first above written.

[SEAL.] RICHARD WALLACH, *Mayor.*
Attest: SAM'L E. DOUGLASS, *Register.*

328 DISTRICT OF COLUMBIA, } ss:
Washington County, }

Be it remembered that on this sixth day of October, in the year of our Lord one thousand eight and sixty-five, before the subscribers, two justices of the peace in and for the county of Washington, personally appears Richard Wall-ch, Esq., mayor of the city of Washington, and acknowledges the foregoing indenture or instrument of writing to be the act and deed of the mayor, board of alderman, and board of common council of the city of Washington, delivered for the use and purposes therein expressed.

CHARLES WALLS, *J. P.* [SEAL.]

[Government stamp, 50 cts.]

SAMUEL E. DOUGLAS, *J. P.* [SEAL.]

[Government stamp, 50 cts.]

I certify that the above is a true copy of the original this 27th day of November, 1865.

[SEAL.] B. MACKALL,
Notary Public.

[5-cts. stamp.]

329 I purchased lot 7, in square 223, in November, 1851—of Key & Dunlop one-half, the other half of W. W. Corcoran—and paid them for the same. The trustee, W. H. Nichols, refused to give a deed for Key & Dunlop's half unless they paid him some four or five hundred dollars which he claimed of them. I had to file a bill in chancery by my attorney, W. S. Cox, who obtained a decree in my favor some years since. Mr. Corcoran also refused to give me a deed unless I paid him additional for some back taxes, which I refused to do. I never did get a deed until the other day—since his return from Europe. This property I gave to my son, Brooke Mackall, Jr., some years ago, and he has had it — possession ever since and has subdivided them into six lots. There is not a more valuable property in the city, as is the belief of many good judges. He rented the part occupied as a restaurant on the 9th February, 1863, and has been drawing the rent ever since. The Secre-
330 tary of War took nearly the balance December 20, same year, and promised to pay fairly for it. Not getting a deed, I could not give him one. In examining the record of tax sales for some other property he accidentally found that Mr. Hyde, Corcoran's clerk, had purchased it at a tax sale nearly some two years before that. In a few days it would have been beyond redemption. He called on Mr. Hyde and obtained from him a transfer of the certificate of sale from the corporation, on which he obtained a perfect deed from the corporation of Washington city, as per act of Congress making such sales a perfect title, as the court had decided. I gave for the property, in 1851, thirty cents a foot, and Mr. Reed, on the corner below, gave twenty-five cents. He sold his small lot & house the other day for seventy thousand dollars, as per his statement in your possession. Mr. Corcoran gave fifteen thousand dol-

lars for his residence on H street and paid only eight cents a
331 foot for adjoining lots now enclosed in his garden; it would now bring ten dollars a foot, such is the advance of property in this city. Why should my son be deprived of that advance? Had the Secretary not have taken it, it would have brought him much more than those highly respectable gentlemen that value it on their oaths put it.

Respectfully, B. MACKALL.

Sworn to and subscribed before me this 28th day of November, 1865.

CHAS. P. WANNALL, *J. P.*

[5c.-stamp.]

WASHINGTON, *March 3rd*, 1866.

Maj. Gen'l Meigs, q'rmaster general.

SIR: During the lifetime of Governor Corwin I employed him individually in behalf of my son, Brooke Mackall, Jr., of this city, who owns the lot on corner of New York avenue and 14th street, occupied by the Paymaster General's Department, to procure and collect from said department what was due to said Brooke Mackall,
Jr., for rent and use of the premises. Since Governor Cor-
332 win's death neither Brooke nor myself, as his agent, has ever recognized any one except Black, Lamon & Co., as attorneys in the premises, as will appear by power of att'y to them from Brooke Mackall, Jr.

Mr. Corwin desired me to allow his partner, Judge Johnson, to assist in the claim, but I refused to allow any one but himself to take charge of it, having confidence in him as an old friend.

Very respectfully, B. MACKALL.

I, Columbus Alexander, of the city of Washington, D. C., after being duly sworn, do hereby certify that I am a citizens of Washington; that I am a large real estate owner in said city; that I know the property owned by Mr. B. Mackall, Jr., which is situated on the southwest corner of New York avenue & 14 street west, in square two hundred & twenty-three (223), in the said city of Washington, which has been for some time & still is occupied by the
Government of the United States, & do say, to the best of my
333 knowledge & belief, that said property is worth $5 per square foot, which valuation is based upon actual sales made of property in that vicinity.

COLUMBUS ALEXANDER.

Sworn to and subscribed before me this 10th day of January, 1867.

[SEAL.] B. MACKALL,
Notary Public.

[5-cent stamp.]

Personally appeared before me D. L. Wells, of the city of Washington, D. C., —, after being duly sworn, deposes and says that he is a citizen of Washington; that he has had considerable experience in buying and selling real estate in said city; that he has examined

the property on the southwest corner of New York avenue & 14th street west, in square two hundred and twenty-three, in the said city of Washington, which belongs to Mr. B. Mackall, Jr., which is now occupied by the United States, & does say that, in his opinion,
334 said property, owing to its location and large front on each street, is worth and would sell for at least $6.00 per square foot.

D. L. WELLS.

Sworn to and subscribed before me this 10th day of January, 1867.

[SEAL.] B. MACKALL,
Notary Public.

[5-cent stamp.]

I, Christopher Cammack, Jr., of the city of Washington, D. C., after being duly sworn, do hereby certify that I am a citizen of Washington; that I own considerable real estate in said city; that I am well acquainted with the location of the property owned by Mr. B. Mackall, Jr., which is situated on the southwest corner of New York avenue & 14th street west, in square two hundred & twenty-three (223), in the said city of Washington, which is now occupied by the Government of the United States, and do say that said property is worth $5 per square foot.

C. CAMMACK, JR.

Sworn to and subscribed before me this 10th day of January, 1867.

[SEAL.] B. MACKALL,
Notary Public.

[5-cent stamp.]

335 Some time between the twentieth and thirtieth day of December, 1863, Brooke & myself went to see the Secretary of War, understanding he had taken military possession of his valuable lots on the corner of New York avenue and Fourteenth street. We were referred to General Canby, assistant Secretary. He said the Secretary had the subject fully considered before the order was issued, and that was the only place that would answer for his purpose; but, said he, the Government will deal justly with you and will allow you all your property would yield you; and so the matter was understood.

The rear of those lots, 30 by 60 feet, containing 1,800 feet, was leased for $1,800 per annum; at the rate Gen. Meigs offers would come to $108 per annum. The building was erected by the persons renting. It will cost now two-thirds more to build than then.

B. MACKALL.

The above statement is correct.

B. MACKALL, JR.

Sworn to and subscribed before me this 5th day of August, 1867.

CHAS. P. WANNALL, *J. P.*

336 We, the undersigned, being acquainted with the value of real estate and ground rents in the city of Washington, D. C., and well knowing the lots of land owned by Brooke Mackall, Jr., corner of 14th street and New York avenue, as occupied by the United States by building and yard for the benefit of the paymaster's department, hereby certify that, according to our best opinion and judgment, the ground rent of the said premises was worth and would have commanded, during the time the same has been so occupied, the amount as expressed and set opposite our names, respectively.

CHARLES A. ALLARD.	$1,200.00 per month.
FRANCIS E. HARRISON.	$1,200.00 per month.
WM. K. MASTERS.	$1,200.00 per month.

Sworn to and subscribed before me this 30th August, 1867.

[SEAL.] B. MACKALL,
Notary Public.

WASHINGTON CITY, 30*th September*, 1867.

J. M. Broadhead, Esq, 2 Comptroller.

SIR: That portion of my property adjoining that which has
337 been for some time & is now occupied by the Government on the corner of New York avenue & 14th street, in this city (the portion alluded to is called the southwest cor. of the property), in the spring of 1862 (thirty feet front by fifty feet deep) was rented at a ground rent of $45 per month. The person who rented it erected a frame building upon the ground, which they occupied for some months, & being compelled to leave the city, I bought the building from them for $80, when I advertised the premises for rent, when I again rented it to a Mr. Rudderforth at $75 per month on the 9th of February, 1864, for three years, he making all the improvements at his own expense. He kept an eating-house & restaurant there for several months, when he sold his lease for $850 to Ireland & Hodge, who altered and spent a great deal on the property. After occupying it for a short time, & finding it such a disorderly location for their business, they offered me $75 per month if I would give them five feet additional in the rear, which, added
338 to the small yard they had, made an addition sufficient. I had the extension exec-ted for them, which theypaid me for; after which they paid me $150 per month rent, independent of the cost of the building.

Very respectfully, B. MACKALL, JR.

Sworn to and subscribed before me this 4th day of October, 1867.

[SEAL.] B. MACKALL,
Notary Public.

I hereby relinquish all right to and authorize Brooke Mackall, Jr., to receive the amount awarded for use of property on 14th street & New York avenue, as it is his.

22d October, 1867.

B. MACKALL.

Witness:

L. G. BRANDERBURG.

The above required and furnished in pursuance of the letter of the 2d Compt., M'ch 27th, 1866 (filed in this claim), to Gen'l Dana in reference to the title.

339 The United States to Brooke Mackall, Jr., Dr.

For the use and occupation by the United States of property of said Mackall, Jr., situate at the southwest'ly corner of the intersection of New York avenue and Fourteenth street, in the city of Washington & District of Columbia—

The amount herein found due being at the rate of twenty-five cents per square foot per annum for the period during which the several portions of the property were occupied by the United States, between the inclusive dates, December 20th, 1863, to July 19th, 1867, viz:

13,499 square feet, 8⅓ months	$2,343 58
11,437 square feet, 5 months	1,191 35
9,921 square feet, 16 months	3,307 00
Allowed in pursuance of the decision made by the Second Comptroller October 18th, 1867, over-uling and modifying the report made by the Third Auditor August 14th, 1867, amounting to six thousand eight hundred & forty-one dollars and ninety-three cents	$6,841 93

340 TREASURY DEPARTMENT,
2D COMPTROLLER'S OFFICE, *Oct.* 23, 1867.

Ex'd.

WILSON, *Clerk.*

TREASURY DEPARTMENT,
THIRD AUDITOR'S OFFICE, *October* 22*d*, 1867.
R. F. RADEBAUGH, *Clerk.*

EXHIBIT A. R. No. 8, for Defendants. Filed Dec. 8, 1882.

In the Supreme Court of the District of Columbia. In Equity.

BROOKE MACKALL, Jr., *vs.* ALFRED RICHARDS *et al.* } No. 8118.

I, Henry R. Elliott, an examiner in chancery, do hereby certify that the hereto attached certificate is the one referred to in the testimony for the defendant, Richards, taken by me and filed on the 7th day of December, 1882, and which was offered in evidence by W. B. Webb, Esq., counsel for Richards, but which was not filed with the testimony. I therefore file the same as part of said testimony and mark it A. R. Exhibit No. 8.

(Signed) HENRY R. ELLIOTT, *Examiner.*

341 EXHIBIT A. R. No. 8. Henry R. Elliott, Examiner.

If bills are wanted return this slip.

OFFICE OF TREASURER AND ASSESSOR,
DISTRICT OF COLUMBIA, *Mar.* 28, 1881.

S. 107–2. Taxes due on — of lot 7, square 223.

Year.	Tax due.	To whom assessed.	Folio.
1860	Paid		
1861	Paid	By sale	200
1862	Paid	To Hyde; bought by Mackall, Jr.	
1863	Paid	By sale	400
1864	Paid		
1865	Paid	By sale	403
1866	Paid	By sale	419
*1867	Paid	By sale	444
*1868	Paid	By sale	475
*1869	Paid	By sale	485
*1870	Paid	By sale	494
*1871–'2	Paid	By sale	518
1873	744 52	Certificate- 6832, 3638	268
1874	875 90	W. H. Nichols & others, tr.	270
1875	1,311 15	W. H. Nichols & others, tr.	288
1876	600 81		417
1877	600 81	Tax on all lot 7	424
1878	310 94	Tax on lot of 7	439
1879	244 73	"	476
1880	244 73	A. & T. A. Richards	116
1881	244 73	Alfred Richards	119

Corporation specials. $30.00 lighting streets — 1867.

342 A. R. EXHIBIT No. 8. (Signed) Henry R. Elliott, Examiner.

OFFICE OF THE COLLECTOR OF TAXES,
DISTRICT OF COLUMBIA,
WASHINGTON, *Mar.* 28, 1881.

Mr. Thomas Wilson:

On the following real estate, to wit, — of lot 7, square 223, assessed, in 1881, in the name of Alfred Richards, there now appears, by the books and records of taxes and assessments, to be due and unpaid the following assessments of tax, as hereon certified to by the officers in charge of the respective accounts:

OFFICE OF THE TREASURER AND ASSESSOR,
DISTRICT OF COLUMBIA, *Mar.* 28, 1881.

Collector of taxes, D. C.:

I hereby certify that the books and records of taxes and assessments of this office for years 1860 to 1881 show that upon the prop-

erty described above taxes — due as follows: For 1873, $744.52; for 1874, $875.90; for 1875, $1,311.15, name of W. H. Nichols & others, trust.; for 1876, $600.81; for 1877, $600.81, on all of lot 7, name of A. & T. A. Richards; for 1878, $310.94; for 1879, $244.73; for 1880, $244.73, on the south 107 feet 2 inches of lot 7; for 1881, $244.73, name of A. Richards, south 107 feet 2 inches of lot 7, square 223.

Lighting streets, $30.00 — 1867.

(Signed) WILLIAM MORGAN,
Assistant Assessor.

OFFICE OF THE CHIEF OF SPECIAL ASSESSMENT DIVISION,
DISTRICT OF COLUMBIA, *Mar.* 26, 1881.

Collector of taxes, D. C.:

I hereby certify that upon the property above described in this certificate the records of this office show the following assessments for special improvements: Lot 7, square 223, front- $152\frac{9}{12}$ ft. on N. Y. ave., name of H. S. Nichols *et al.*, trust., $836.55, with interest at 10 % from Sept. 2, 1872, and $9.45 costs.

Same lot, front- $151\frac{2}{12}$ ft. on 14th street, name — A. & T. H. Richards, $382.25, with interest at 10 % from Mar. 19, 1875.

(Signed) WM. OSCAR ROOME,
Chief Special Assessment Division.

[On margin:] 01–305. N. 1–6.

OFFICE OF THE WATER REGISTRAR,
DISTRICT OF COLUMBIA, *Mar.* 28, 1881.

5941.

Collector of taxes, D. C.:

I hereby certify that upon the property described in this certificate the records of this office show that the tax for laying water-main in front of the south 107 feet 2 inches front of lot 7, square 223, in name of A. Richards, is paid in full.

(Signed) THOMAS C. COX,
Water Registrar.
Per J. WILL CROSS.

Water rent excepted. Fee, 50 cents, paid.

[On margin:] 4–167.

Witness my hand and seal of office this 29 day of March, 1881.

(Signed) JOHN F. COOK, [SEAL.]
Collector of Taxes, District of Columbia.

343 *Motion to Suppress Depositions of Fendall E. Alexander & of Brooke Mackall, Jr., and for Order to Show Cause Against Sol. of Comp't, Westel Willoughby, &c., for Contempt of Court.*

In the Supreme Court of the District of Columbia, — day of ——, 1882.

BROOKE MACKALL, Jr., *vs.* ALFRED RICHARDS & WIFE & LEONARD MACKALL. } Equity No. 8118.

To the equity court of said District:

Your petitioner, Robert M. Newton, humbly praying, respectfully represents that in the cause hereinbefore stated, now pending before one of the examiners of this honorable court, Mr. Alonzo Bailey, the solicitor of the complainant, Westel Willoughby, has assumed the extraordinary position of directing to your petitioner, as counsel of record of the defendant, Leonard Mackall, touching his right to cross-examine the complainant and witnesses produced by him concerning the matter embraced in the issue joined between
344 the complainant in said cause and the said defendant; that the said Westel Willoughby has recklessly invaded the sanctity of the jurisdictional rights of this honorable court in said matter, in this, that he has assumed to himself the right to limit and control the production of testimony and the method of its production touching the matter in issue in said cause; that he did, on the 7th inst., in his office in this city, totally defy the jurisdictional rights and powers of this court by the following acts committed by him: By refusing to permit your petitioner to cross-examine Mr. Fendall Alexander, a witness sworn to give his testimony before the aforesaid examiner, Mr. Bailey, on behalf of the complainant in said cause; by refusing to permit your petitioner to cross-examine the complainant, Brooke Mackall, Jr., recalled as a witness in his own behalf in said cause; by assuming the right to control the acts of the aforesaid examiner by ordering him to pursue such a course as resulted in completely ignoring and setting at defiance the rights of the defendant, Leonard Mackall, in said cause and of your petitioner, his solicitor, in the same,
345 and by actually controlling the acts of said examiner. Your petitioner humbly submits it as a proposition that the right to cross-examine witnesses produced by the party holding the affirmative of the issue is an absolute right to the defendant in any case, either at law or in equity; that it is a sacred & inalienable right, subject alone to the ruling of the court in accordance with the law of evidence, and that when an attorney of record assumes the right to control or to limit the exercise of the right of cross-examination or to exercise any control over an examiner of this court, in the duty devolving upon him of taking depositions in any cause, he is invading the right of this court, and that said action is a dangerous invasion of the rights of parties to the record and to the interests

of equity; and your petitioner further states that the issue joined in the aforesaid cause between the complainant, Brooke Mackall, Jr., and the defendant, Leonard Mackall, is in the question as to the nature and character of the title which the complainant in
346 said cause claims to possess of lot 7, square 223, in this city; that the defendant, in response to the bill in said cause, filed his answer that the complainant has no title to said lot in equity or at law, and that if he has any title to said property, either at law or in equity, it was procured as a result of undue influence, decrees, & of fraud; and that it is a matter of the highest importance to the interests protected by this court that he have an order of your honor to proceed to cross-examine the witness hereinbefore referred to, and who may be hereafter produced by the complainant in said cause. Wherefore, premises considered, your petitioner now prays an order of this honorable court suppressing the depositions of Fendall E. Alexander and of Brooke Mackall, Jr., taken before the commissioner, Mr. Alonzo Bailey, on the 7th December; that the complainant in this cause & his solicitor be ordered to give notice to the parties defendant in the same of an appointment to take said depositions anew, with the right conveyed in said order to the
347 defendant, Leonard Mackall, to cross-examine said witnesses & all witnesses who may be hereafter produced by the complainant in said cause; and your petitioner further prays for an order against the solicitor in said cause, Westel Willoughby, to show cause why he should not be fined for contempt of court for his acts hereinbefore stated or receive a reprimand for the same.

And your petitioner will will ever pray.

(Signed) ROBERT M. NEWTON,
Solicitor of Defendant, Leonard Mackall, in said Cause.

Copy of the within acknowledged served this 8th day of December, 1882.

348 *Testimony on Behalf of the Complainant in Rebuttal. Filed Dec. 9th*, 1882.

In the Supreme Court of the District of Columbia. In Equity.

BROOKE MACKALL, Jr., *vs.* ALFRED RICHARDS *et al.* } No. 8118.

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In the Supreme Court of the District of Columbia. In Equity.

BROOKE MACKALL, Junior,
vs.
ALFRED RICHARDS *et al.* } No. 8118.

Be it remembered that at an examination of witnesses begun and held on the 7th day of December, A. D. 1882, when the within depositions were taken, I, Lorenzo A. Bailey, an examiner in
349 chancery, did cause to be personally present, at the office of W. Willoughby, Esq., at No. 456 Louisiana avenue, in the city of Washington, in the District of Columbia, Fendall E. Alexander and Brooke Mackall, Junior, to testify on the part and behalf of the complainant in a certain cause now pending in the supreme court of the District of Columbia, wherein the said Brooke Mackall, Junior, is complainant and Alfred Richards and others are defendants.

(Signed) LORENZO A. BAILEY,
Examiner in Chancery.

In the Supreme Court of the District of Columbia. In Equity.

BROOKE MACKALL, Junior,
vs.
ALFRED RICHARDS *et al.* } No. 8118.

Testimony in rebuttal on behalf of the complainant, Brooke Mackall, Junior, in support of his bill on the issue between him and the defendant, Alfred Richards, in the above-entitled cause.

350 WASHINGTON, D. C., *December* 7, 1882.

Met at 1 o'clock p. m. at the office of W. Willoughby, Esq., No. 456 Louisiana avenue, pursuant to notice and agreement between counsel.

Present: W. Willoughby, Esq., counsel for complainant; W. B. Webb, Esq., counsel for defendant A. Richards; R. M. Newton, Esq., of counsel for defendant Leonard Mackall:

Whereupon FENDALL E. ALEXANDER, a witness of lawful age, produced and sworn on behalf of the complainant on the issue between him, the complainant, and defendant Richards, testified as follows:

By Mr. WILLOUGHBY:

Q. Please state your name, age, residence, and occupation.

A. Fendall E. Alexander; 32 years of age; residence, 1614 14th street N. W.; member of the bar.

Q. Did you know Brooke Mackall, Senior?

A. Yes.

Q. Were you present at an interview between him and Alfred Richards in or about the year 1873, when there was conver-
351 sation in reference to a tender of money?

A. I was. I was also present with Brooke Mackall, Junior.

Q. Please state what took place at that interview.

A. The details of the conversation in reference to the tender were reduced to writing, and a few hours afterwards—some three or four hours—*and* submitted to me to see if it accorded with my recollection, and found that the statement in writing accorded with my recollection of the conversation, and I signed it.

(Witness produces the paper-writing referred to and is allowed to refresh his memory from it.)

A. The date is August 8, 1873. The two Mr. Mackalls and myself went to the residence of Mr. Richards and met him there. At the time when we arrived at his house we were in a carriage, and we found in front of Mr. Richards' house his carriage and a servant man attending to it, and the servant man was asked by one of us, I think by Mr. Mackall, Senior, where Mr. Richards was.
352 He, the servant, said he was in the house, and the servant went in the house himself. Mr. Richards came out. Mr. Mackall said to Mr. Richards, in substance, "I have come by the instructions of my attorney to tender you the amount I owe you under your judgment, as appears by the statement by the clerk of the court of the amount." Mr. Richards said, in substance, "I'll take it." Mr. Mackall, Senior, said, "Well, let's go into the house and settle it." They started towards the house, a few feet from the carriage, and I went with them, and Mr. Richards said, "You only owe me eight hundred dollars—about eight hundred dollars." Said Mr. Mackall, Senior, "I owe you the full amount of the judgment and I herewith tender it to you." The amount he tendered was thirteen hundred and sixty-two dollars. I saw the money and saw the statement of the clerk of the court. Mr. Richards said, "I do not do business in the street" (or words to that effect), "and come to my
353 attorney's office," and Mr. Richards jumped into his carriage and went away. He declined to take the money then. We got into our carriage and drove away to Mr. Hine's office. While standing out in front of Mr. Hine's office Mr. Richards, and, I think, Mr. Webb, came out, and Mr. Mackall, Senior, approached Mr. Richards and Mr. Richards said, "You owe me between two and three hundred dollars." Mr. Mackall, Senior, said, "According to the statement of the clerk of the court I owe you the full amount, which I tendered you." The substance of what occurred in front of Mr. Hine's office was this: That Mr. Mackall, Senior, insisted on paying the full amount, according to the statement of the clerk of the court, and Mr. Richards claimed only some two hundred and odd dollars. Mr. Mackall, Senior, went away and Mr. Richards got into his buggy. After that the two, Mr Mackalls and myself went over to the clerk's office and looked at the papers in the judgment case, the subject-matter of the conversation, and I distinctly
354 remember that we found no credit or order for a credit thereon.

A memorandum was made at the time also of the notes, the character, numbers, denominations, and amount of the notes that were tendered. I mean by notes the money that was tendered.

Some were greenbacks, some were national bank notes. I counted the money while coming up in the carriage. It was all in an envelope with the statement of the clerk of the court.

Cross-examination by Mr. WEBB:

Q. Who were the parties to the judgment case that you speak of?

A. I think the firm of Richards Brothers, brickmen in the southern part of the city. A. and T. A. Richards, I think, were the plaintiffs, but I don't know whether they are brothers. Mr. Brooke Mackall, Senior, was the defendant.

Q. Upon what was the suit brought, a promissory note or an open account?

A. I think it was upon a note.

Q. Whose note?

A. I think it was upon Mr. Brooke Mackall's, Senior.

355 Q. What was the amount of the note?

A. I don't recollect the amount.

Q. For what amount was the judgment?

A. I don't recollect the amount; the statement Mr. Mackall had was a short copy of the judgment, with a calculation of the interest and costs.

Q. Can you recollect the date of that note?

A. No, I do not. I did not pay particular attention to the note, except in that casual manner in which a lawyer would look into the papers, because the note was merged in the judgment; our object in looking in the papers and the docket was to ascertain if there was a credit on the judgment or an order for a credit.

Q. Were you invited to accompany the Messrs. Mackall to witness this tender?

A. I was.

Q. Did you examine the short copy of the judgment to ascertain what the amount was? And, if so, tell us what that amount was.

A. I did examine the short copy and assisted on making

356 the calculations to see if they were right; the judgment, interest, and costs amounted to the sum which I stated that Mr. Mackall tendered.

Q. Did you make a computation of the interest at that time?

A. I think I did.

Q. Did you find it correct?

A. I found the interest, judgment, and costs to correspond with the clerk's calculation; if I mistake not, the whole thing was in McNamee's handwriting.

Q. Can you tell us now how much of that calculation was principal, how much interest, and how much costs?

A. I could not after so long a time; it has been nearly ten years ago.

Q. Do you remember any of the circumstances attending the tender, except as you got them from the memorandum in your hands, to which you have referred?

A. Oh, yes. I recollect making the calculation, what a hot day

it was, and the earnestness with which Mr. Mackall tendered the money and his manner.

357 Q. Did Mr. Mackall, Senior, take the money out of the envelope at the time he made the tender to Mr. Richards?

A. My recollection upon that subject is this: On going down in the carriage we each counted the money, compared the result with the clerk's statement, found it correct, and Mr. Mackall, Senior, held that money in his hand from the time when he took it out until after he made the tender. We counted the money when we came back in the carriage, and it was at my suggestion, I think, that we took a memorandum of the character and amounts of the notes, as at that time there was some talk about certain moneys being legal tender.

Q. Was the money counted in the presence of Mr. Richards?

A. I don't think it was, but my recollection is not very clear upon that.

Q. Is your recollection clear that the money was shown to Mr. Richards at all?

A. Oh, yes, sir.

Q. You say that after this interview at the house Mr. Richards and Mr. Webb, you think, met you in front of Mr. Hine's

358 office; where did Mr. Richards and Mr. Webb come from at that time—from what direction?

A. They came from the direction of Mr. Hine's office, or from that building.

Q. Was Mr. Richards' buggy standing in front of Mr. Hine's office when you came up in your carriage?

A. Yes, sir.

Q. How long a time intervened between the two interviews?

A. About as long a time as it would take one of these hacks to drive up; about 15 or 20 minutes.

Q. About what hour; what time of the day were these interviews?

A. About the middle of the day, I think; between 12 and 1; somewhere along there; pretty hot, I know.

Q. At this second interview did Mr. Richards ask Mr. Mackall to go with him to his attorney's office?

A. I think he said he would meet him at Mr. Webb's office.

Q. Did he say for what purpose?

A. When he jumped into his carriage at his house, after saying he did not do business in the street, he made that remark, that he would meet him at Mr. Webb's office; the natural inference

359 was that it was for the purpose of settling this business.

Q. You say that in examining the judgment case your object was to ascertain whether there was any credit upon the judgment. Had you any reason to suppose that there was a credit upon that judgment?

A. Certainly; as Mr. Richards at his house stated that Mr. Mackall owed him $800.00 when he was tendering him $1,362.00.

Q. Was anything said at either of these interviews to which you have testified that in any way explained this difference as to the amount of this judgment?

A. No, sir.

Mr. Webb here closes his cross-examination.

Mr. Willoughby here closes his examination and asks that the witness sign his deposition.

Mr. Newton offers to cross-examine the witness.

360 Mr. Willoughby requests the examiner to close the deposition, which is accordingly done.

(Signed) F. E. ALEXANDER.

Sworn to and subscribed before me this seventh day of December, A. D. 1882.

(Signed) LORENZO A. BAILEY,
Examiner in Chancery.

BROOKE MACKALL, Jr., a witness of lawful age, being produced and sworn on behalf of the complainant on the issue between him and the defendant, Alfred Richards, testified as follows:

By Mr. WILLOUGHBY:

Q. What have you to say in reference to showing a deed of the lot 7, in square 223—the property in question—to Mr. Emory?

A. I wish to state that I never showed a deed for lot 7, square 223—the property in question—to Mr. Matthew G. Emory, as I had no such deed and did not not have any deed from my father to that property except the deed executed by him before his death—a short time before his death.

361 (Question and answer objected to by Mr. Webb as not proper evidence in rebuttal.)

Q, Did you have a deed of other lots signed or executed by your father at the time mentioned by Mr. Emory?

(Objected to by Mr. Webb on the same grounds.)

A. I had a deed for some lots situated in what was then called the first ward. It was for several lots—was a deed from father and two other parties to me. Father had purchased this property and made the first payment and told me that if I would pay the balance that he would join with the parties in a deed to me and convey it to me, and the deed was made. Among these lots there is a lot 7, same number of the lot in question, which is also lot 7. (Witness referring to the deed:) This lot 7 is in square 17. The date of the deed is December 21st, 1863. The deed was acknowledged January 9th, 1864; recorded November 2, 1865. This deed was

362 not a printed blank, but was written out in full. I do not recollect that I ever showed Mr. Emory a deed for any property, but if I did show him a deed it must have been this deed, because it was the only deed I had at that time.

Q. What was the character of your father's handwriting?

A. It was a very small, distinct hand, very much like a lady's.

Q. How did your father write his name in signing instruments?

A. B. Mackall always. I never knew him to write it otherwise. I think I can safely say that he never signed his name other than B. Mackall as long as I can recollect. I have seen him sign his name hundreds of times to deeds and other instruments and never knew him to sign his name in full.

Q. Can you state the amount of money your father tendered to Mr. Richards in August, 1873?

A. Yes, sir. (Referring to memorandum:) it was thirteen hundred and sixty-two dollars.

Q. Did you make a subdivision of that lot 7, in square 223,
363 at or about the time mentioned by Mr. Forsyth, and can you state anything with regard to the draft mentioned by him as being upon his book?

A. Before I started to erect what is now known as the Palace Market building on lot 7, square 223, fronting on New York avenue, I subdivided lot 7 into five sub-lots, all fronting on New York avenue. The building covered two of the sub-lots. The peculiar shape of the building is owing to the fact that the Government of the United States had taken possession of and was occupying the property immediately in the rear of the building. I drew the rough draft of the subdivision in the first place, and Mr. Forsyth, the surveyor, made a complete subdivision from that, which was lost. The subdivision was similar to the diagram of lot 7, square 223, on page 5 of the bill filed by me in this case; the only difference being that the subdivision by Mr. Forsyth shows five (5) sub-lots and this one in the bill shows four (4).

Q. Mr. Mackall, have you any corrections to make in re-
364 gard to your age, in regard to your statement as to your age, in answer to questions put by Mr. Newton in this case?

A. I find, by reading over my testimony, that on page 23, line 16, I made a miscalculation as to my age in 1859. It should have been about nineteen instead of about twenty-three.

Cross-examination by Mr. WEBB:

Q. How long after Mr. Forsyth made the draft of the subdivision you speak of was it in your possession?

A. I do not recollect how long.

Q. Was it a year or more?

A. I think it was only a short time. It is my impression that it was filed in the Treasury Department in my claim against the Government.

Q. Was the subdivision signed by anybody?

A. I do not recollect. It was regularly made, and I intended to have it recorded, and my recollection is that when I looked for it to be recorded it could not be found.

Q. Was it certified by Mr. Forsyth?

365 A. I do not recollect whether it was or was not. It was a very complete subdivision, and the building was built in accordance with it.

Q. Was this draft an official plat such as could be used for any purpose?

A. It was just the same kind of a plat or subdivision as is always made of original lots by the surveyor of the city.

Q. Was it a plat made out in the surveyor's office for use?

A. It was, and was complete in every respect and was ready to be recorded. I can't recollect whether it had the certificate or not, but think it had. The surveyor told me everything was done except recording, and it was ready to be recorded.

Mr. Webb here closed his cross-examination of the witness.

There being no further questions to ask witness his deposition is here closed and signed by the witness.

(Signed) B. MACKALL, JR.

Sworn and subscribed before me this 7th day of December, A. D. 1882.

(Signed) LORENZO A. BAILEY,
Examiner in Chancery.

366 It is stipulated and agreed between counsel that the statement of rents made by Joseph C. G. Kennedy, Esq., in a former case, and contained in the bill in this case, and dated December 9, 1880, and that all the exhibits in this case may be read in evidence.

Mr. Willoughby announces that his testimony in rebuttal on the issue between complainant, Brooke Mackall, Junior, and defendant, Alfred Richards, is here closed.

Adjourned *sine die*.

(Signed) LORENZO A. BAILEY,
Examiner in Chancery.

DISTRICT OF COLUMBIA, }
County of Washington, } *ss:*

I, Lorenzo A. Bailey, an examiner in chancery in and for the District of Columbia, do hereby certify that, in pursuance of notice and
367 agreement between counsel, the foregoing depositions were by me taken down and reduced to writing in the presence of and from the statements of the witnesses at the time and place designated in the caption thereof, and were then and there by me read aloud to the witnesses and by them subscribed in my presence and in the presence of counsel who were then and there attending, the witnesses having been by me first duly sworn to testify the truth, the whole truth, and nothing but the truth touching the matters at issue in said cause.

I further certify that I am not of counsel for any of the parties to said cause, and that I am in nowise interested therein.

(Signed) LORENZO A. BAILEY,
Examiner in Chancery.

368 *Motion of Defendant, Leonard Mackall, to Suppress Depositions, &c. Filed Dec.* 12, 1882.

In the Supreme Court of the District of Columbia, — day of ——, 1882.

BROOKE MACKALL, Jr., *vs.* ALFRED RICHARDS, *et al.* } Equity No. 8117.

And now comes the defendant, Leonard Mackall, in the above-entitled cause & moves the court to suppress the depositions of Brooke Mackall, Jr., the complainant in said cause, & of Fendall E. Alexander, a witness called for the complainant in the same, taken before the examiner, Mr. Alonzo E. Bailey, on the 7th December, & upon the ground that the said depositions were taken in violation & regardless of the rights to cross-examine said witnesses by solicitor of defendant hereinbefore stated & totally in disregard of all the rights incident to the right of cross-examination; and the said defendant further moves the court that all the matter put
369 upon the record in connection with the provocation of said testimony be expunged therefrom & cancelled, & that the complainant in this cause be required to appoint a sitting with one notice to the defendants in the same for the purpose of taking said depositions anew, and that the order herein prayed for direct that this defendant have all the rights incident to cross-examination in the provocation of said testimony.

(Signed) ROBERT M. NEWTON,
Sol. of Def't, L. Mackall.

Notice of Motion to File Cross-Bill for Defendant, Leonard Mackall. Filed Dec. 12, 1882.

In the Supreme Court of the District of Columbia, — day of ——, 1882.

BROOKE MACKALL, Jr., *vs.* ALFRED RICHARDS & LEONARD MACKALL. } Equity No. —.

370 To Judge Willoughby, solicitor of complainant in said cause:

SIR: Take notice that on Thursday, Dec. 14th, at 10 a. m., I will proceed by motion for an order of court granting leave to the defendant, Leonard Mackall, to file a cross-bill for discovery and relief against the complainant and the defendants, Alfred Richards & wife, and, as affecting the complainant, upon the following grounds, to wit: To enable the court to make a decretal order against the complainant, requiring him to produce into court the deed alleged to have been executed to him by the late Brooke Mackall, deceased, on the 27th day of February, 1880, and to furnish the premise

for a decree to set aside said alleged deed upon the ground of fraud, undue influence, and duress in its procurement.

Respectfully,

(Signed) ROBERT M. NEWTON,
Solicitor for Defendant, Leonard Mackall.

Copy of the within acknowledged served on this 12th day of Dec., 1882.

(Signed) W. WILLOUGHBY,
Sol. for Comp't.

371 *Copies of Pleadings, Decrees, &c., in Equity Cause* 2373, *Filed on Behalf of Complainant. Filed Dec.* 12, 1882.

MACKALL, Sr., and MACKALL, Jr., *vs.* RICHARDS *et al.*

Original Bill. Filed May 2, 1871.

In the Supreme Court of the District of Columbia. In Equity.

ALFRED RICHARDS and THOMAS A. RICHARDS, Thomas Wilson, J. D. Parkinson, Francis Wheatley, D. Hannan, The Washington Gas-Light Company, Henrietta P. Pepper, and Patrick O'Hare, Complainants,
and
BROOKE MACKALL, BROOKE MACKALL, Jun., William W. Corcoran, J. M. H. Hollingswith, Virginia Hollingswith, Julia A. Nichols, Margaret Reintzel, Roberta Hannewinkle, William Hannewinkle, Emily de Voss, Jaques de Voss, Martha Bolling, George Bolling, Mary Doughty, Fanny A. Doughty, Julia Albert, James Albert, and Susan Doughty, Defendants.
} Docket No. 11.

372 To the honorable the judges of the supreme court of the District of Columbia, holding a special term of said court:

The complainants respectfully represent—

1st. That the complainants, Alfred Richards and Thomas A. Richards, are citizens of the District of Columbia and residents of the city of Washington, and are doing business in said city under the name and firm of A. and T. A. Richards. Thomas Wilson is also a citizen of the said District and a resident of said city, and was one of the firm of Corwin, Owen and Wilson, now dissolved; that the other complainants are also citizens of said District, and that all of the said complainants are the holders of judgments against the said defendant, Brooke Mackall, Junior, and bring this suit in their own behalf and for the benefit of all other creditors of the said Brooke Mackall, Junior, who will become parties to and share the costs and expenses attending these proceedings.

2d. That the defendants, Brooke Mackall and Brooke Mack-
373 all, Jr., William W. Corcoran, J. M. H. Hollingswith, Virginia Hollingswith, Julia A. Nichols, Margaret Reintzel,

Mary Doughty, Fannie A. Doughty, and Susan Doughty, are citizens of the District of Columbia aforesaid and reside therein; that Roberta Hannewinkle and William Hannewinkle reside in Richmond, in the State of Virginia; George Bolling and Martha Bolling reside in *Pittsburg*, in the said State of Virginia; James Albert and Julia Albert reside in Baltimore, in the State of Maryland, and that Jaques de Voss and Emily de Voss reside in Berlin, in Prussia.

3d. That on or about the first of October, 1867, the complainants, Alfred and Thomas A. Richards, by their firm name of A. and T. A. Richards, on the law side of this honorable court recovered judgments against the defendants, Brooke Mackall, Junior, as maker, and Brooke Mackall as endorser, of a certain promissory note for the sum of $897.42, with interest and costs, with an *in*-dition attached to such judgments that there should be a stay of execution on such judgments until the first of March, 1868;
374 that afterwards, and after the period of the said stay of execution had elapsed, said complainants proceeded to enforce their said judgments by having recourse to certain real estate belonging to the said Brooke Mackall, Junior, situated in the said city of Washington, and that accordingly, under and by virtue of certain writs of execution issued upon such judgments and certain other judgments prior in date to those recovered by your complainants as aforesaid, the marshal of the District of Columbia took and sold a certain parcel of real estate lying and being in the said city and contained within the cou-ses and distances following—that is to say, part of lot numbered seven (7), in square numbered two hundred and twenty-three (223), beginning at the northeast corner of said square, and running thence south forty-four (44) feet; thence westerly to the west end of the lot; thence in a northerly direction with the west line thereof to the north line of said lot; then with said north line to the place of beginning—to Alfred Richards for
375 the sum of two thousand five hundred dollars, and annexed the same to said Richards by deed bearing date the 7th of October, 1870, now recorded among the land records of Washington county, in the District of Columbia, in liber No. 639, one of said records, as will more particularly appear upon inspection of said record; that after payment of the said sum so realized from the sale of the said piece of property — the said judgments so as aforesaid prior in date to the said judgments of the complainants, A. and T. A. Richards, there remained in the hands of the marshal aforesaid the sum of $646.89, applicable to the judgments so as aforesaid recovered by the said complainants, A. and T. A. Richards, as will more fully and at large appear from a copy of the account or statement made by the said marshal of the said sale and the said judgements filed herewith and marked "Exhibit A;" that after the application of the sum so remaining in the hands of the marshal to the said
376 judgements of the complainants, A. and T. A. Richards, there remained a large balance due and payable on said judgements, as will appear from a short copy of said judgements hereto annexed and marked "Exhibit B," and that the said balance still remains unpaid.

4th. That on or about the 6th of June, 1865, the complainant, Francis Wheatley, recovered on the law side of this court a judgement against the said Brooke Mackall, Junior, for the sum of $1,483.13, with interest and costs; that said judgement was forwarded by proceedings instituted under the act of Congress making provision for the enforcement of mechanics' liens and the liens of material men, and is prior in date to the said judgements so as aforesaid recovered by the said complainants, A. and T. A. Richards; that no portion of the fund arising from the sale of the said part of lot 7, in square 223, as aforesaid made under the execution issued to sales for the judgments recovered by the said A. and T. A. Richards was applied to the judgements of the said complainant,
377 Francis Wheatley, because, as complainants are advised, the said Wheatley had not, at the date of the said sale of said part of lot, ordered an execution to issue for the enforcement of said judgement, or because such execution had not come into the hands of the said marshal of the said District at the time of such sale; but complainants are advised that the judgements of the said complainants, Francis Wheatley, operates as a lien upon the said part of lot 7, in square 223, from its date; that a writ of *fieri facias* to enforce said judgement has been issued and is still outstanding unsatisfied, and that no part of the said judgement has been paid.

5. That on or about the 3d day of April, 1868, W. H. Owen and Thomas Wilson, doing business under the name and firm of Corwin, Owen and Wilson, recovered on the law side of the court against the said Brooke Mackall, Junior, a judgment for the sum of $300, with interest and costs, which said judgement was afterwards assigned to and entered to the — of the complainant,
378 Thomas Wilson; that a writ of *fieri facias* was issued upon the said judgement and placed in the hands of the marshal of the District of Columbia, who made a return of *nulla bona* thereon, and that said judgement remains still unsatisfied, no part thereof having been paid, all of which will more fully and at large appear from a short copy of said judgement hereunto annexed and marked "Exhibit C;" that on or about the 19th of November, 1868, the complainant, J. Dulin Parkinson, recovered on the law side of this court a judgement against said Brooke Mackall, Junior, for the sum of $137.75, with interest and costs, and caused a writ of *fieri facias* to be issued thereon, but that no part of said judgement has been paid; that on or about the 15th day of November, 1869, the complainant, Daniel Hannan, recovered on the law side of this court a judgement against said defendant, Brooke Mackall, Junior, for $253.90, with interest and costs, and has caused a writ of *fieri facias* to be
379 issued thereon, to which the marshal of the District of Columbia has made return of *nulla bona*, but no part of said judgement has been paid; that on or about the 5th day of January, 1870, the complainant, Henrietta P. Pepper, recovered on the law side of this court a judgement against the defendant, Brooke Mackall, Junior, for the sum of $300, with interest and costs, and caused a writ of *fieri facias* to be issued thereon, but that no part of said judgement has been paid; that on or about the 28th day of February, 1870, the

complainant, The Washington Gas-Light Company, recovered a judgment against the said Brooke Mackall, Junior, on the law side of the court for $115.50, with interest and costs, and caused a writ of *fieri facias* to be issued thereon, to which the marshal of the said District has made return of *nulla bona*, and that no part of the said judgement has been paid; that on or about the 22d day of February, 1871,
the complainant, Patrick O'Hare, recovered on the law side of
380 this court a judgement against said defendant, Brooke Mackall,
Jr., for the sum of $289.69, with interest and costs, no part of which said judgment has been paid; all of which will more fully and at large appear upon reference to the record of the said several judgements in this court, on the law side thereof.

6. That the said Brooke Mackall, Junior, is the owner of certain very valuable real estate in the city of Washington—that is to say, of all that part or portion of the parcel of ground known and designated upon the ground plat or plan of the said city of Washington as lot numbered seven (7), in square numbered two hundred and twenty-three (223), remaining after taking or carving out therefrom the aforesaid piece or part thereof so as aforesaid taken, sold, and conveyed by the marshal of the District of Columbia to Alfred Richards to satisfy the judgement of the complainants, Alfred and
Thomas A. Richards, as far as the same would go after satis-
381 fying certain other judgements prior in date to the said judgements, as is hereinbefore set forth — contained. (Complainants annex to and make a part of this their bill of complaint a plat of said lot shewing the portion thereof sold as aforesaid and the portion remaining unsold;) that the said parcel of ground and premises ought to be made responsible for and subjected to the judgements of complainants hereinbefore particularly mentioned, but that, as complainants are advised, the said several judgements do not operate as liens upon the said parcel of ground, because, as far as can be ascertained from the land records of county of Washington, in the District of Columbia, where such title should appear, the legal title to the said parcel of ground is not vested in the said Brooke Mackall, Jr., and that said parcel of ground cannot, therefore, under the operation of the law controlling and governing such matters, be taken and sold under an execution to satisfy said judgements.

382 7. That complainants are informed and believe, and upon such information and belief aver and charge, that the said Brooke Mackall, Jr., is the real owner of the aforesaid parcel of ground and premises, and that he kept his title thereto off of the land records of Washington county, in the District of Columbia, for the purpose of defrauding complainants and hindering and delaying them in the recovery of their aforesaid judgements; that in certain proceedings instituted in this court on or about the 29th of June, 1869, by the said Brooke Mackall, Jr., against William B. Todd and the mayor, &c., of Washington city, the said Brooke Makall, Jr., avers that he is the proprietor, and supports such averment by an oath, as will appear from the proceedings in cause No. 1703, equity docket 9, in this court; that in certain other proceedings in-

stituted in this court on or about the 15th day of September, 1869, by the said Brooke Mackall, Jr., against certain of complainants, among others, praying the court to restrain and enjoin the
383 marshal of the District of Columbia from making sale of the part of said lot seven, in square two hundred and twenty-three, so as aforesaid sold to said Alfred Richards to satisfy the said judgements of said complainants, the said Brooke Makall, Jr., alleges, and supports the said allegation with an oath, that he is equitably entitled to the whole of said lot seven, in square two hundred and twenty-three, having received a parol gift thereof, but that the said property has never been conveyed to him, and that he has no legal title to any part thereof, as will appear from the proceedings in said cause in this court; that in point of fact complainants are informed and believe, and so believing aver and charge, that the said lot numbered seven, in square two hundred and twenty-three, was sold many years ago by William W. Corcoran and William S. Nichols, in whom the title was vested, to the said Brooke Makall, who paid the full purchase-money therefor and received a convey-
384 ance thereof in due form, and that afterwards the said Brooke Makall sold or gave and conveyed the said lot seven to Brook Makall, Jr.; that the said Brooke Makall never placed the conveyance so as aforesaid made to him upon the land records of Washington county, in the District of Columbia, and that the said Brooke Makall, Jr., has never placed the conveyance to him or any other evidence that the title of said lot has been transferred to him upon the said land records, and that the said Brooke Makall and Brooke Makall, Jr., conferring and contriving to hinder, delay, and defraud complainants, have kept and still do keep the title to the said lot seven, in square two hundred and twenty-three, purposely concealed, and have hitherto and still do keep the said conveyances off the said land records, where the same ought to be spread, for the purpose of hindering and delaying said complainants in the recovery of their said judgements.

385 8. That since the sale and conveyance of the said lot seven, in square two hundred and twenty-three, to the said Brooke Makall by William W. Corcoran and William S. Nichols in manner aforesaid the said William S. Nichols has departed this life, and that the record title to said lot is now vested and standing in the said William W. Corcoran and the heirs-at-law of the said William S. Nichols, who are as follows: J. M. H. Hollingswith and Virginia Hollingswith, Julia A. Nichols, Margaret Reintzel, Roberta Hanewinckel, William Hanewinckel, Emily de Voss, Jaques de Voss, Martha Bolling, George Bolling, Mary Doughty, Fannie A. Doughty, Julia Albert, James Albert, and Susan Doughty, who are defendants to this bill.

9. That in the year 1862 the said lot seven, in square two hundred and twenty-three, was sold for taxes assessed thereon by the corporation of the said city of Washington, and was at such sale purchased by one Anthony Hyde, who afterwards transferred his said purchase to the defendant, Brooke Makall, Jr., to

whom the said lot was conveyed in due form by the said
386 corporate authorities of the said city of Washington by deed bearing date the 6th of October, 1865; that the said Brooke Makall, Jr., has never placed this last-mentioned deed upon the land records of Washington, in the District of Columbia, but has kept the same off of said records for the purpose further of concealing his title to said lot, and so delaying, hindering, and defrauding said complainants; that there has accumulated and is now due and unpaid a very large amount of taxes assessed upon the said lot seven, in square two hundred and twenty-three, for which the corporate authorities have advertised and are about to sell the said lot, as, under the provisions of law in such case made and provided, they have a right to do; that, notwithstanding all these normal claims and incumbrances, complainants are advised that the said lot of — is of ample value to pay off and satisfy the several judgements so as aforesaid held by them, and that in good con-
387 -cience they are entitled to have the decree of this court ordering that said lot shall be sold under the directions and by an officer of the court, and the proceeds applied, first, to the payment of said incumberances, and next to the payment of the said judgements held by complainants.

Forasmuch, then, as complainants are without remedy in the premises according to the strict rules of the common law, and can only have relief in a court of equity, where matters of this nature are properly cognizable and relievable, to the end, therefore, that the said Brooke Mackall and Brooke Makall, Jr., and the rest of the defendants may full, true, direct, and perfect answers make to all and singular the matters and things hereinbefore stated and charged as fully and particularly as if the same were hereinafter repeated and they thereunto particularly interrogated, and particularly the said defendants, Brooke Makall and Brooke Makall, Jr., may discover them and make known to the court the condi-
388 tion of the title to the said lot seven, in square two hundred and twenty-three, in the said city of Washington, and may produce and bring into court here all deeds and other evidences of the title to such lot to be inspected by and disposed of by the court—

The complainants pray as follows:

1. For writs of subpœna against such of said defendants as reside within the jurisdiction of the court.

2. For an order of publication against such of said defendants as reside without the jurisdiction of the court.

3. That a decree may pass commanding and directing the said defendants, Brooke Makall and Brooke Makall, Junior, to make known and discover to the court the condition of the title to the said lot seven, in square two hundred and twenty-three, in the city of Washington, and to produce and file here in court all conveyances, deeds, or other evidences of the title to the said property as may be in their possession or within their reach.

389 4. That a decree may be passed for the sale of the said lot seven, in square two hundred and twenty-three, under the directions

of the court and by an officer appointed thereby, and the proceeds of such sale applied to the payment, first, of the incumberances existing and being on the said lot, and next, so far as the same will go, to the payment of the several judgements of the complainants, with the interest and costs accrued thereon, as hereinbefore specified, the amount of such incumberances and judgements to be ascertained by the auditor of the court.

5. That the complainant may have such other and further relief in the premises as the nature of the case may require.

(Signed) W. B. WEBB,
Counsel for Complainants.

EXHIBIT A to O. Bill. Filed May 2, 1871.

PLANT *vs.* MACKALL. } No. 3478.

Amount of sales	$2,500 00
Debt, interest, & costs	193 96
Marshal's fees	7 16

390

EMORY *vs.* MACKALL. } No. 3477.

Debt, interest, & costs	$1,458 41
Marshal's fees	25 39
	$1,684 92
Advertisement	168 19
	$1,853 11
Bal. due & to be credited on A. & T. A. Richards' execution	$646 89
Cash paid on purchase	250 00

Paid marshal's fees & advertisement as follows:

Cost due marshal on Plant	$7 16
" " do. Emory	25 39
" " do. Richards	21 49
	$222 23
Bal. due Richards	$27 77

Supreme Court of the District of Columbia.

W. H. OWEN & THOS. WILSON, Corwin, Owen & Wilson, Use of Thomas Wilson,
vs.
BROOKE MACKALL, Jr.
} At Law. No. 3708.

1868, April 3d.—Judgement for plaintiffs: Damages, $300
391 & costs; cost-, $13.70; ad. co., 4.90.
Fi. fa. returned "*nulla bona.*"

Test: R. J. MEIGS, *Cl'k*,
P'r C. McNAMEE,
Ass't Cl'k.

Answer of B. Mackall, Jr., to O. Bill. Filed July 6, 1871.

In the Supreme Court of the District of Columbia, this 3d day of July, 1871.

ALFRED RICHARDS *et al.*
vs.
BROOK MACKALL, Jr., *et al.*
} Equity No. 2373, Doc. 11.

The separate answer of Brooke Mackall, Jr., to the bill of complaint of complainants.

To the honorable judges of the supreme court of the District of Columbia, holding a special term of said court:

For answer to said bill I say as follows:

1st. I admit the plaintiffs and defendants reside as stated in said bill of complaint.

2nd. I admit the plaintiffs, Alfred & Thomas A. Richards, recovered judgment against this defendant and defendant, Brook
392 Mackall, as stated in the 3d paragraph of said bill, and also a sale of the real estate described in said bill under a writ of *fieri facias* issued upon said judgment, the name of the purchaser, time of sale, amount of the sale, and distribution of the fund arising therefrom.

3d. I admit the recovery of a judgment by Francis Wheatley, as stated in said bill, but deny it is a lien upon said property, for reasons hereinafter stated.

4th. I admit the recovery of a judgment by W. H. Owen & Thomas Wilson, as stated in the 5th paragraph of said bill; also a judgment by F. Dunlin Parkinson and one by Daniel Hannan and one by Henrietta P. Pepper and one by the Washington Gas-Light Company and one by Patrick O'Hare, and no payments made thereon, as stated in said bill.

5th. This defendant deny-s that he is the owner of that piece of real estate known as lot numbered seven (7), in square numbered two hundred and twenty-three, or any part thereof, and was
393 not the owner thereof nor any part thereof at the time nor at any time since said judgments were rendered against him.

I never had any deed of conveyance, nor any agreement in writing for a conveyance, of said real estate excepting a deed of date, I believe, of 6th October, 1865, from the late corporation of Washington, under a tax sale of said lot. Said deed I have lost. I never put it upon record, but was advised by counsel somewhat learned in the law and verily believe said tax sale was erroneous and the deed predicated therein void.

I believe and aver that defendant, Brook Mackall, has the equitable if not the legal title to said property. I did not neglect to put said tax deed upon record for the purpose of concealing the ownership of said lot nor for the purpose — hindering, delaying, or defrauding anybody. I admit there is a large amount of arrears of taxes against said lot.

I have no deed or other evidence of title to said lot or any
394 part thereof in my possession or under my control.

And now, having fully answered, I pray to be hence dismissed, &c.

(S'g'd) B. MACKALL, JR.

L. G. HINE,
Sol'r for Def't, B. Mackall, Jr.

I, Brooke Mackall, Jr., on oath say that I have read the foregoing answer by me subscribed, and know the contents thereof, and that the facts therein stated as of my own knowledge are true, and as to those things stated on information and belief I believe — to be true.

(S'g'd) B. MACKALL, JR.

Sworn to and subscribed before me this 3d day of July, 1871.

R. J. MEIGS, *Clerk*,
By L. P. WILLIAMS,
Ass't Clerk.

Answer of B. Mackall, Sr., to O. Bill. Filed July 12, 1871.

In the Supreme Court of the District of Columbia, this 12th day of July, 1871.

ALFRED RICHARDS *et al.*
vs.
BROOKE MACKALL *et al.*
} Equity No. 2373.

395 The separate answer of Brooke Mackall to the bill of complaint of complainants.

For answer to said bill, or to so much as he is advised it is material for him to answer unto, this defendant, answering, says:

1st. He admits the residence of parties, plaintiffs & defendants, as stated in the bill, and that said complainants, Alfred and Thomas A. Richards, on or about the 1st day of October, 1867, recovered judgment against him and Brooke Mackall, Jr., for $897.42, &c.

2nd. For further answer, this defendant says that on or about the 19th day of November, A. D. 1851, he purchased of W. W. Corcoran

an undivided half part of said lot number seven, in square No. 223, and paid therefor; that a deed was tendered him, which he refused to accept; the balance of said lot he purchased from Wm. S. Nicholls, as trustee, who died soon thereafter, and defendant never received a deed of conveyance therefor, and has no paper title
396 thereto, and has no evidence of his title to said lot in his possession or control; that he purchased said lot and promised to give it to his son, Brooke Mackall, Jr.. at some future time, but has not since been in a financial condition to carry out such intention, and has never given him any conveyance of the said lot nor any paper-writing relating to said lot.

Said lot was purchased from W. W. Corcoran and Wm. S. Nichols, trustees.

And now, having fully answered, &c.

(S'g'd) B. MACKALL.

I, Brooke Mackall, on oath say that I have read the foregoing answer by me subscribed and know the contents thereof, and that the facts therein stated as of my own knowledge are true, and that as to those facts therein stated on information and belief I believe them to be true.

(S'g'd) B. MACKALL.

Sworn to and subscribed before me this 12th day of July, 1871.

R. J. MEIGS, *Cl'k*,
By L. P. WILLIAMS,
Ass't Cl'k.

397 *Replication. Filed Jan'y* 30, 1872.

In the Supreme Court of the District of Columbia.

RICHARDS *vs.* MACKALL. } 2373. Equity Doc. 11.

The plaintiff hereby joins issue with the defendant, and will hear the cause on bill, answer, and depositions against the defendant.

W. B. WEBB,
Solicitor for Complainant.

Petition for Leave to Amend Bill. Filed Feb'y 17, 1873.

In the Supreme Court of the District of Columbia.

ALFRED RICHARDS and Others *vs.* BROOKE MACKALL, BROOKE MACKALL, Jr., and Others. } No. 2373. Equity Doc. 11.

The plaintiff prays the court for leave so to amend the bill heretofore filed by him in this cause that he may have such de-
398 cree passed therein as will authorize a conveyance to him of all the title outstanding in the defendants in the part of lot 7, in

square 223, sold by the marshal under execution and purchased by the plaintiff, Alfred Richards, as appears fully in the said bill; and so as in duty bound the —

W. B. WEBB,
Sol'r for Pl'ffs.

Amended Bill. Filed Mar. 6, 1873.

In the Supreme Court, District of Columbia. In Equity.

ALFRED RICHARDS and THOMAS A. RICHARDS, THOMAS WILSON, & Others
vs.
BROOKE MACKALL, BROOKE MACKALL, Jr., WILLIAM W. CORCORAN, and Others.
No. 2373. Eq. Doc. 11.

The amended and supplemental bill of Alfred Richards, Thomas A. Richards, and others, by leave of the court first had and obtained in the above-entitled cause exhibited, respectfully represents to the court—

399 That from the allegations made in the said original bill it appears that under and by virtue of certain writs of execution issued upon certain judgements against the defendant, Brooke Ma'kall, Jr., in due form of law, the marshal of the District of Columbia took and sold to the complainant, Alfred Richards, part of lot numbered seven (7), in square numbered two hundred and twenty-three (223), in the city of Washington, in the District of Columbia, *in* the said part of lot being particularly set out and described by metes and bounds in the said bill, and that the sum realized from said sale being insufficient to satisfy the said judgement, the said original bill was filed to subject another portion of the said lot particularly mentioned and sold as aforesaid to the operation of the said judgment, and praying that a trustee might be appointed to sell the same; that the assistance of the court was invoked because, as it is alleged, the said

400 Brooke Ma'kall, Jr., though abundantly shown to be the owner of said part of said lot 7, in square 223, has ever studiously kept the deed of the said property by which the same is conveyed to him off of the land records of the District of Columbia, so that, as far as the said records are concerned, it does not appear that the legal — to the said parts of lot — are in the said Brooke Ma'kall, but that in reality the same is now vested and outstanding in William W. Corcoran and the heirs-at-law of William S. Nichols, deceased, who are made parties defendant to the said original bill.

That the complainant, the said Alfred Richards, in amendment of said bill and by way of supplement thereto, respectfully shows that, under and by virtue of the aforesaid sale, made to him by the marshal of the District of Columbia, of the said part of lot seven (7), in square two hundred and twenty-three (223), particularly described in the original bill filed in the cause, he has acquired only the equitable title of the said Brooke Mackall, Jr., thereto, the legal title being

401 also outstanding in the manner as aforesaid in the said William W. Corcoran and the heirs at-law of William S. Nichols, deceased; that the complainant answers and charges that the

said William W. Corcoran and the said William S. Nichols, during his lifetime, sold the said property to the defendant, Brooke Mackall, who afterwards transferred the same to Brooke Mackall, Jr., as is alleged in the said original bill; that the said William W. Corcoran and the heirs-at-law of said William S. Nichols in point of fact have no title to the said lot seven (7), in square two hundred and twenty-three (223), except a bare legal title, there being no record of any conveyance from them to the said Brooke Mackall or Brooke Mackall, Jr., the same being studiously kept from the land records of the District of Columbia by the said Mackall for the purpose of fraud and concealment; that the outstanding naked legal title operates to injure the value of the title acquired by complainant under the sale so as aforesaid made to him by the marshal of the District of Columbia,

and he prays the court that, in addition to the relief prayed
402 in the said original bill, he may have a decree ordering any trustee, *be* appointed under the prayer of said bill, to make conveyance to complainant, Alfred Richards, and his heirs and assigns, of the said part of lot seven (7), in square two hundred and twenty-three (223), so as aforesaid by the marshal of the District of Columbia conveyed to said complainant, as fully and particularly set forth in said original bill.

(S'g'd) ALFRED RICHARDS.

W. B. WEBB,
Sol'r for Comp'ts.

Decree in Special Term. May 1, 1873.

In the Supreme Court of the District of Columbia, the 1st day of May, 1873. In Equity.

ALFRED RICHARDS *et al.*
vs.
BROOKE MACKALL, BROOKE MACKALL, Jr., *et al.* } No. 2373, Doc. 11.

This cause coming on to be heard upon bill, answer, and
403 the depositions taken and filed therein, and being duly considered, it is by the court this first day of May, 1873, upon motion of the plaintiff's solicitor, ordered, adjudged, and decreed that the title to the said real estate in the proceedings in the said cause particularly mentioned—that is to say, to all of lot numbered seven, in square numbered two hundred and twenty-three, in the city of Washington, not heretofore sold by the marshal of the District of Columbia to the complainant, Alfred Richards, is vested in the defendant, Brooke Mackall, Jr., and that the same be sold for the purpose of paying the judgements and the other incumbrances particularly set out in said proceeding, or that may be in any other way existing thereon, and that William B. Webb and Thomas Wilson be, and they are hereby, appointed trustees to make sale thereof, and that the manner of proceeding in making said *sail* shall be as follows: First, they shall file with the clerk of the court a bond to the United States, in the sum of twenty thousand dollars, with

sureties to be approved by the court or a judge thereof,
404 conditioned for the faithful discharge of the duties imposed upon them by this decree, or that may be imposed upon them by any further order of the court passed in the cause; second, they shall sell the said real estate at public auction to the highest bidder, first giving notice of the time and terms of said sale, which shall be upon the premises, by advertisement in some newspaper in the city of Washington, the first insertion of said advertisement to be at least four weeks before the day of sale, the terms of said sale to be as follows: One-third of the purchase money to be paid in cash, and the balance in equal payments in nine, twelve, eighteen, and twenty-four months, the purchaser or purchasers to give for the deferred payments his or their promissory notes secured to the satisfaction of said trustees; third, that they shall report the said sale to the court with an affidavit as to its fairness and good faith, and upon the full ratification thereof shall convey the said property to the pur-
405 chaser or purchasers, and shall thereby vest in said purchaser or purchasers the title thereto of any description and however subsisting in any way in each and every of the said parties to these proceedings, and that this decree shall of itself operate to divest and take out of the said Brooke Mackall all title of whatever kind in the said property he may have and vest the same in the said trustees for the purposes hereinbefore set forth and contained.

By the court:

(S'g'd) A. WYLIE.

Decree in General Term. Oct. 16, 1873.

In the Supreme Court of the District of Columbia, the 16th day of October, 1873.

ALFRED RICHARDS and Others
vs.
BROOKE MACKALL, BROOKE MACKALL, Jr., and Others. } No. 2373. Equity Docket 11.

This cause coming on to be heard in this court in general term, on appeal from the decree passed in said cause at the special
406 term of said court held in the month of March, 1873, and, having been fully heard and considered, it is by the said supreme court of the District of Columbia, sitting in general term as aforesaid, ordered, adjudged, and decreed that the said decree made at said special term be, and the same is hereby, affirmed; from which decree the said defendants pray an appeal to the Supreme Court of the United States.

By order of the court.

Copies of papers in case of Richards, &c., *vs.* Mackall *et al.*, equity cause No. 2373, stipulated to be read on the hearing of this cause of Mackall *v.* Richards, No. 8118.

(S'g'd) W. WILLOUGHBY,
Sol. for Comp't.

(S'g'd) W. B. WEBB,
Sol. for Richards.

407 *Notice to Examiner in Chancery, Laurenzo Bailey, Esq., to Give Notice of Sitting for Cross-Examination of Witnesses, Brooke Mackall, Jr., & of Fendall E. Alexander. Filed Dec.* 12, 1882.

In the Supreme Court of the District of Columbia, 12th day of Dec., 1882.

BROOKE MACKALL, Jr.,
vs.
ALFRED RICHARDS & WIFE & LEONARD MACKALL. } Equity No. 8118.

To Lorenzo A. Bailey, Esq., examiner in chancery.

SIR: I beg leave to notify you that, having this day received instructions from his Hon. Judge Hagner, given me as attorney of record in this cause of the defendant, Leonard Mackall, to suggest that you designate a day for a sitting, at as early a date as possible, for reopening the examination of witnesses produced by the
408 complainant in the above-entitled cause had before you on the 7th inst., in order to afford to the defendant, Leonard Mackall, the opportunity of cross-examining the said witnesses. I now request, in pursuance of said instructions, that you appoint a day for the sitting at as early a date as possible, and that you notify counsel of comp't of the same, that I may proceed in the exercise of my right, which was absurdly & without warrant of reason or of practice denied me on the day hereinbefore stated by counsel for complainant.

Very respectfully,
(S'g'd) ROBERT M. NEWTON,
Sol. of Def't, L. Mackall.

Notice for Taking Deposition of M. G. Emory for Defendant, L. Mackall. Filed Dec. 13, 1882.

In the Supreme Court of the District of Columbia, Dec. 13th, 1882.

BROOKE MACKALL, Jr.,
vs.
ALFRED RICHARDS *et al.* } Equity No. 8118.

To Westel Willoughby, Esq., counsel for complainant.

409 SIR: Please take notice that on Friday, the 15th inst., at 1 p. m., I will proceed to examine Matthew G. Emory, summoned to appear before comm'r, Mr. Elliott, as a witness for the defendant, Leonard Mackall, in the above-entitled cause.

Y'rs respectfully,
(S'g'd) ROBERT M. NEWTON,
Solicitor of Defendant, Leonard Mackall.

Service admitted Dec. 13th, 1882.
(S'g'd) W. WILLOUGHBY,
Sol. for Comp't.

Notice of Cross-Examining Witnesses, Brooke Mackall, Jr., & of Fendall E. Alexander, &c. Filed Dec. 14, 1882.

In the Supreme Court of the District of Columbia, 14th day of Dec., 1882.

BROOKE MACKALL, Jr., *vs.* ALFRED RICHARDS *et al.* } Equity No. 8118.

To Westel Willoughby, Esq., solicitor of complainant.

SIR: Please take notice that on Friday, Dec. 15th, at 11 a.
410 m., I will proceed to cross-examine the complainant, Brooke Mackall, Jr., & Fendall E. Alexander, before Mr. Lorenzo Bailey, one of the examiners of this court, upon matters adduced in evidence before said examiner on the 7th inst.

Very respectfully,

(S'g'd) ROBERT M. NEWTON,
Solicitor of Defendant, Leonard Mackall.

Served upon me Dec. 14th, 1882.

(S'g'd) W. WILLOUGHBY,
Sol. for Comp't.

Notice to Examiner in Chancery, Lorenzo Bailey, to Summon Brooke Mackall & Fendall E. Alexander, Witnesses in Rebuttal, for Cross-Examination. Filed Dec. 15, 1882.

WASHINGTON, D. C., *Dec.* 13, 1882.

To Lorenzo A. Bailey, Esq.

SIR: Please summon Brooke Mackall, Jr., and Fendall E. Alexander to appear before you on Saturday, at eleven a. m., Dec.
411 16th, to be cross-examined by me, as solicitor of defendant, Leonard Mackall, upon matter adduced in evidence by them, before you on the 7th inst., as witnesses for the complainant in the case of Brooke Mackall, Jr., *vs.* Alfred Richards *et al.*

Yours respectfully,

(S'g'd) ROBERT M. NEWTON,
Solicitor of Def't, L. Mackall.

Rec'd Dec. 13, '82.

L. A. B.

Motion Against Alonzo Bailey, Examiner, to Show Cause, &c. Filed Dec. 18, 1882.

In the Supreme Court of the District of Columbia — day of ——, 1882.

BROOKE MACKALL, Jr., *vs.* A. RICHARDS *et al.* } Equity No. 8118.

To the equity court of said District:

Your petitioner, Leonard Mackall, one of the defendants herein, humbly praying, respectfully represents that he notified Alonzo Bailey, Esq., an examiner in chancery of this court, on the 14th inst., to
412 summon witnesses in said cause, who had been examined in the same for complainant, in rebuttal, to wit, Brooke Mackall, Jr., & Fendall E. Alexander, that they might be cross-examined by his solicitor touching matters in issue in said cause between the complainant & your petitioner; that said notification was in writing, & stated that said witnesses were summoned to be cross-examined by y'r petitioner on Saturday last past at 11 a. m.; that your petitioner's counsel appeared duly before the said examiner on the day stated, and was informed by him that he had not summoned said witnesses, and that it was his intention not to regard said notice served upon him.

And your petitioner further states that the record embracing the testimony already taken in said cause before said examiner has been made up without reference to the right of your petitioner upon the issue joined between the complainant in the same & your petitioner; and your petitioner states that the evidence to be adduced by him from said witnesses is important. Wherefore, premises
413 considered, your petitioner prays an order of this court requiring said examiner, Alonzo Bailey, to show cause why he should not reopen said examination — this court for his action hereinbefore stated, and that he be required to place the rights of your petitioner properly in the record as embraced in the issue joined between the complainant and your petitioner.

And your petitioner will ever pray.

(S'g'd) ROBERT M. NEWTON,
Solicitor for Def't, L. Mackall.

Sworn to before me Dec. 19, 1882.

(S'g'd) R. J. MEIGS, *Clerk*,
By M. A. CLANCY,
Ass't Clerk.

Order upon Above. Filed Dec. 19th, 1882.

In the Supreme Court of the District of Columbia. In Equity.

Upon the foregoing petition and affidavit it is, this 19th day of December, 1882, ordered that Alonzo A. Bailey, an examiner of this court, show cause, by Thursday, the 21st inst., at 10½ o'clock a. m.,

why he refused to examine or issue summons for witnesses, as is averred in this petition, provided a copy of this order be served upon the said Bailey this day.

(S'g'd) A. B. HAGNER,
Asso. Justice.

414 *Motion to Have Cause Removed from Calendar & for Time to Take Testimony. Filed Dec.* 18, 1882.

In the Supreme Court of the District of Columbia, — day of ——, 1882.

BROOKE MACKALL, Jr., *vs.* ALFRED RICHARDS *et al.* } Equity No. 8118.

To the equity court of said District:

Your petitioner, Leonard Mackall, one of the defendants herein humbly represents that the counsel of complainant in said cause has caused the same to be placed upon the calendar for the Jan. term, 1883, before the evidence of your petitioner has been filed and before the right of your petitioner to cross-examine certain witnesses produced by the complainant in rebuttal, Brooke Mackall, Jr., & Fendall E. Alexander, has been exercised by him; that the failure to have exercised said right is a result of a refusal by the examiner, Mr. Bailey, to take the testimony upon cross-examination of said witnesses; that other evidence in said cause taken before the examiner, Mr. Edwin Forrest, has not been filed
415 in this court by your petitioner; that the delay in filing said evidence has resulted from the fact that your petitioner has been expecting the privilege of filing a cross-bill in said cause, and until the question embraced in a motion for leave to file a cross-bill had been decided he has kept said evidence from the files of the clerk's office with the expectation of producing other evidence in rebuttal of the complainant in said cause in the event of his motion for leave to file a cross-bill being overruled; for all of which premises stated your petitioner humbly prays an order of this court requiring said cause, No. 8118, to be taken by the clerk from the calendar, and that your petitioner be permitted to have until —— for filing his evidence in the same, and for notifying the clerk to calendar said cause; and your petitioner will ever pray.

(S'g'd) ROBERT M. NEWTON,
Solicitor of Def't, Leonard Mackall.

416 *Order Limiting Time for Taking Testimony, with Consent of Counsel. Dec.* 20, 1882.

Supreme Court of the District of Columbia, Dec. 20th, 1882.

BROOKE MACKALL, Jr., *vs.* ALFRED RICHARDS *et al.* } Equity No. 8118.

This cause came on to be heard upon the motion to strike the cause from the calendar & to enlarge the time for taking testimony

for the defendant, Leonard Mackall, filed Dec. 18, 1882, whereupon, solicitor for complainant consenting thereto, it is ordered that the said defendant, Leonard Mackall, have ten days from this date in which to take & file testimony in this cause.

(S'g'd) A. B. HAGNER,
Asso. Justice.

Consented to.

W. WILLOUGHBY,
Sol. for Comp't.
ROBERT M. NEWTON,
Solicitor of Def't, L. Mackall.

417 *Motion Stating the Loss from the Clerk's Office of Order of Court of December 19th, 1882, and Praying for Another Rule Against Lorenzo A. Bailey, Examiner in Chancery, to Show Cause, &c. Filed Dec. 21, 1882.*

In the Supreme Court of the District of Columbia, — day of Dec., 1882.

BROOKE MACKALL, Jr.,
vs.
ALFRED RICHARDS & WIFE & LEONARD MACKALL. } Equity No. 8118.

To the equity court of said district:

Your petitioner, Leonard Mackall, one of the defendants herein, repectfully states that on Tuesday, the 20th inst., he procured a rule from this court requiring Lorenzo A. Bailey, an examiner of this court, to show cause, on Thursday, the 21st in-t., why he should not reopen the examination had before him on Dec. 7th, of witnesses for the complainant, in said cause—Brooke Mackall, Jr., and Fendall E. Alexander; that the motion embracing the rule in said
418 cause made was left with the clerk on the day it was made; that his counsel has applied for it at the clerk's office, and that, after a diligent search for the same, it cannot be found; and your petitioner states that it is a matter of importance to him that he exercise his right to cross-examine the witnesses hereinbefore stated before said testimony is filed; that the time for taking testimony for your petitioner in said cause has been limited to the period of ten days from date hereof. Wherefore, premises considered, your petitioner prays another order of this court requiring the said examiner, Lorenzo A. Bailey, Esq'r., to show cause why he shall not reopen the examination hereinbefore referred to, to the end that your petitioner may exercise his right to cross-examin*ation* the witnesses, Brooke Mackall, Jr., & Fendall E. Alexander; and your petitioner will ever pray.

(S'g'd) ROBERT M. NEWTON,
Solicitor of Def't, Leonard Mackall.

419 *Order Renewing Rule Against Lorenzo A. Bailey to Show Cause, &c. Filed Dec.* 21, 1882.

In the Supreme Court of the District of Columbia, 21st day of Dec., 1882.

BROOKE MACKALL, Jr.,
vs.
ALFRED RICHARDS & WIFE & LEONARD MACKALL. } Equity No. 8118.

This cause coming on to be heard this day upon motion of defendant, Leonard Mackall, for a renewal of the rule given on the 20th inst. against Alonzo A. Bailey, an examiner of this court, it is thereupon ordered, adjudged, and decreed that the said rule is herewith ordered as renewed against Lorenzo A. Bailey, and that he is herewith required to show cause why he should not reopen the examination had before him on the 7th inst. of the witnesses Brooke Mackall, Jr., & Fendall E. Alexander, and it is ordered that a copy hereof be served upon said examiner this day, the said Bailey
420 to show cause at 10½ o'clock a. m., on Wednesday, the 3d of Jan'y, 1883.

(S'g'd) A. B. HAGNER,
Asso. Justice.

Endorsement on back: Served copy of this order on Lorenzo A. Bailey. Dec'r 21st, 1882. (S'g'd) Clayton McMichael, U. S. marshal.

Testimony on Behalf of Defendant, Leonard Mackall. Filed January 2, 1883.

In the Supreme Court of the District of Columbia. In Eq.

BROOKE MACKALL, Jr.,
vs.
ALFRED RICHARDS *et al.* } No. 8118.

Testimony on behalf of defendant, L. Mackall.

Edwin Forrest, examiner.
Examiner's fee, $50; p'd by S. S. Henkle.

421 DISTRICT OF COLUMBIA, *County of Washington,* } *ss:*

In the Supreme Court of the District of Columbia. In Eq.

BROOKE MACKALL, Jr.,
vs.
ALFRED RICHARDS *et al.* } No. 8118.

Be it remembered that at an examination of the hereinafter — witnesses and defendant, Leonard Mackall, begun and held on the 30th

day of October, 1882, and continued from time to time by adjournments, as within noted, until the 17 day of November, 1882, when the within depositions were taken—

I, Edwin Forrest, an examiner in chancery, do hereby certify that I caused to be personally present at the office of R. M. Newton, in the city of Washington, District of Columbia, the said witnesses and defendant, Leonard Mackall, to testify on his own behalf, with due and sufficient notice to counsel for respective parties.

(S'g'd) EDWIN FORREST, *Examiner.*

422 In the Supreme Court of the District of Columbia. In Eq.

BROOKE MACKALL, Jr., *vs.* ALFRED RICHARDS and WIFE and LEONARD MACKALL. } No. 8118, Docket 22.

WASHINGTON, D. C., *October 30th*, 1882.

Ten (10) o'clock a. m.

Met pursuant to notice.

Present: W. Willoughby, solicitor for the complainant, and R. M. Newton, solicitor for the defendant, Leonard Mackall.

Whereupon LEONARD MACKALL, one of the defendants and a witness in his own behalf, of lawful age, being first duly sworn according to law, was examined and testified as follows:

By R. M. NEWTON:

1 Question. You are the defendant, Leonard Mackall, in this case?

Answer. I am.

2 Q. State the relation you hold to the late Brooke Mackall, deceased.

423 A. His eldest son.

3 Q. Were you appointed trustee on the thirteenth day of January, 1874, by your father to control lot seven (7), in square numbered two hundred and twenty-three (223), in this city?

A. I was.

4 Q. Will you state where that deed of trust is at present?

A. The deed of trust I took possession of at the time it was acknowledged before the magistrate and held it for a couple of years; probably not so long.

5 Q. To whom did you deliver that deed of trust?

A. I delivered it to my father. I met my father on the street and he asked me if I had the deed recorded.

6 Q. You have already answered that the deed of trust was executed by your father to you on the thirteenth day of January, 1874, to control lot seven (7), in square numbered two hundred and twenty-three (223), in this city. I ask you next where that

424 deed of trust is at present.

A. I delivered that deed of trust to Judge Willoughby on February 26th, 1880. I received a postal from him.

Solicitor for defendant, Leonard Mackall, offers and puts in evidence the postal card referred to by the witness, and the same is marked by the examiner as Defendant L. M.'s Exhibit A No. 1, and returned herewith.

7 Q. Have you seen that deed of trust from that time to this?

A. I have not.

8 Q. Please inspect Exhibit 10 filed with the bill in this cause and state whether the original deed of trust is correctly represented by that exhibit as affecting lot numbered seven (7), in square numbered two hundred and twenty-three (223).

A. Yes.

9 Q. Did the original deed of trust, to the best of you knowledge, embrace any other real estate in Washington or Georgetown?

425 A. It did.

10 Q. State what it was.

Solicitor for the complainant objects to the question as not being competent.

The solicitor for the defendant, Leonard Mackall, states that the evidence given of the original deed of trust is of a secondary character, and is all the defendant, Leonard Mackall, has to rely upon, as it is manifest from the record that this bill of complaint calls for proper discovery.

A. It included all property owned by him in the West.

11 Q. Please state the history of the deed of trust from the time of its execution by your father to the 26th day of February, 1880.

Solicitor for the complainant objects to the question as irrelevant, and states further that he will object to all testimony which

426 is irrelevant under the issues in this cause, and all incompetent testimony, and says further that it is understood by him that objection is made to all testimony not bearing upon the issues made between the complainant and Alfred Richards and wife, defendants; and complainant's counsel hereby offers to stipulate that no decree shall be made in this cause affecting the claim of Leonard Mackall and his brothers and sisters, as devisees of Brooke Mackall, prejudicial thereto, provided testimony is not taken which is objected to here as irrelevant.

A. At that time father was living on Thirteenth street. He sent for me. I saw him the next day in his room. He told me that Brooke and he had quarreled.

Solicitor for the complainant here enters his objection to the testimony last given as especially incompetent.

A. (Continuing:) That Brooke had burst open his door

427 and trunk, and that he had left him without money or food. I provided food for him; likewise my mother sent provisions to him. I stayed with him that night. He said he was afraid that Brooke would return, and he wanted me for protection. The next day he said to me that he wished to have another trustee; that the property was in Joseph B. Hill's name as trustee and in his own

right. His reasons for so doing were that he believed that Brooke and Hill would combine to swindle him out of his property. He asked me who I thought was a proper person to make trustee. I advised him to go to my brother-in-law, Mr. Christy, which he did with me, but Colonel Christy refused to be trustee. He then said: "My son, you will have to be it." I told him that I would on one condition, and that was that he would never again have any business transactions with Brooke. I had the papers on my father's order drawn by Mr. M. F. Morris, I think those are his initials,
428 of the firm of Merrick and Morris. The deed was executed before Justice of the Peace Craig; I do not know his first name. I took possession of that deed and held it for some time.

Solicitor for the complainant objects to all this testimony as incompetent and irrelevant.

12 Q. What was next done with that deed of trust?

A. Father asked me if I had the deed recorded. I said that I had not; that my business would not permit me to spare that time. He asked me to give it to him; that he would have it done. I did so, and saw nothing more of the deed until the ejectment suit was brought against Richards. Father said that on the day that the deed was taken by Brooke he took it out of his pocket and Brooke refused to record the deed and kept it for some time—for a couple of
429 years. Suit could not be brought until the deed was recorded. I went with father to see Judge Willoughby, and Judge Willoughby said to me that he had tried to induce Brooke to record that deed so that suit could be brought. After the suit was brought I asked Judge Willoughby to let me have the deed, which he did. I kept it until I returned it to him, as before stated. I have not seen it since.

13 Q. Who was present with you when you went to see Judge Willoughby in regard to having the deed of trust recorded?

A. My father.

14 Q. About what time was this—how long before the action of ejectment was brought?

A. Well, I could not exactly say how long.

15 Q. Just state how long—one or two weeks, a month, or how long?

A. To the best of my recollection, it was a month, probably.

16 Q. What connection did you have, Mr. Mackall, with the direction and conduct of the suit of ejectment that you have
430 referred to against Richards?

A. I was requested by my father to see Judge Willoughby and ask him to bring the suit, which I did.

17 Q. Please state where you were residing during the year 1859, and state whether or not you supported yourself during that time.

A. I was living with my father—my parents—at 1905 Pennsylvania avenue, and for the best portion of the year I was supported by him.

18 Q. Where was the complainant in this cause during that year, to the best of your recollection?

A. He was living at my father's, and while he was in Indiana—I really forget the place—he was in a dry-goods establishment, one of the firm being a cousin of my mother's.

19 Q. Can you state the name of the firm?

A. I cannot; I don't remember.

20 Q. Do you remember ever having heard any remark made by any one of the family in connection with the return of the
431 complainant from Indiana in 1859?

A. Yes; I heard my mother say when he returned that he was always making trouble between her and father, and that it was a pity that he had not remained there.

Solicitor for the complainant objects to the question and answer last given as incompetent.

21 Q. Will you state the connection in which this remark was made, to the best of your recollection?

A. On the return of my father from his office every day Brooke would meet him and would make complaint about the family generally. He would induce my father to believe that my mother was very extravagant, and that the children were disrespectful to him, and anything that would occur that would displease Brooke he would so report it to father. He caused the servants to be whipped when there was no necessity for it, and it was a general talk
432 amongst the family, "Don't do such or such a thing; Brooke will report it to father." He required all to be subservient to him, and if they did not please him he would so report it to father.

Solicitor for the complainant protests against this evidence as scandalous and irrelevant.

22 Q. State any instance or instances or circumstances that you may remember as having occurred during this period of time showing the relation of complainant towards his father.

A. Well, every order given or request given for food had to go through Brooke's hands. He used to change it whether they thought that father ought to have it or not.

23 Q. Who do you mean by they?

A. The family—my mother and sisters. Well, on several occasions I remember when the physician gave his prescription for medicine for father, and it would be referred to Brooke, and he would say, "Oh, he don't need the medicine." Sometimes
433 when the family were sick the medicine would not be obtained for several days.

24 Q. Did these several instances occur previous to the institution of the suit for divorce by your mother against your father?

A. They did.

25 Q. When did you first start in business for yourself?

A. I think in 1857 or 1858.

26 Q. What was your first employment?

A. I was employed in the United States Coast Survey at a salary of fifteen dollars ($15) a month, where I remained for about a year.

I then went into the Treasury, where I was for about a year, for the purpose of settling some mint accounts. I was appointed by Mr. Whittlesey, the Second Comptroller.

27 Q. What was the salary or what was done in regard to paying you for these services by the proper authority?

A. Congress made an appropriation in the spring of four thousand dollars ($4,000) to pay for the settlement of these mint ac-
434 counts. My father brought me the draft. I signed it, but I never received any money I know.

28 Q. Was your father and Mr. Whittlesey in the same office in the Treasury?

A. Father was under Mr. Whittlesey and had been for a number of years. I did the work in father's room by father's directions.

29 Q. Were you ever employed by the clerk's office of the supreme court of the District of Columbia or by what is now the supreme court of the District of Columbia?

A. Yes, sir; I was employed there a year or more.

30 Q. Please state, as near as you can remember, the time that you were employed in that capacity.

A. From the time that I left the Treasury. I think it was in 1859—the winter of 1858 or 1859—and the summer previous. I was there for a year or more.

31 Q. Who drew the salary that you were entitled to whilst in the clerk's office?

435 A. My father. Congress did not make the appropriations until late in the spring, and when I went to draw my money Mr. John A. Smith told me, who was then a clerk, that the money went towards paying the costs and charges of suits that father had brought.

32 Q. Please state where you were in 1860—that was the year previous to the beginning of the late war?

A. I was at home, supported by my father; for a portion of the time I stayed with a friend of mine in Georgetown. Do you want me to give the reasons why I stayed with that friend?

R. M. NEWTON: If they are pertinent to the issues between the complainant and defendant, L. Mackall.

A. I received an appointment as captain's clerk under Captain Tancil, of the navy. I had even got my uniform. Father heard of it and went to see Captain Tancil without my knowing it and I was prevented from going.

436 33 Q. Did you ever reside in Bellefont, Pennsylvania? If so, state when and under what circumstances.

A. Yes, sir; I went to Bellefont in the fall of 1860.

34 Q. In what capacity?

A. I went there to go on my mother's farm, and I remained there until the fall and summer.

35 Q. Now, I will ask you to explain where you were from the time of the end of the late war to the summer of 1868?

A. I was in Bellefont, Pennsylvania.

36 Q. How long did you live in Bellefont?

A. Three years; I left there in 1868.

37 Q. Please state where you next resided?

A. I next resided in Washington, in the summer of 1868; I went to live with my father that fall.

38 Q. Please state the circumstances which induced you to leave Bellefont and come to Washington in 1868?

A. My mother sold her farm and I was thrown out of em-
437 ployment. My wife wrote to my father stating the occurrence and he wrote to me, sending me money to return to Washington. On my arrival here he asked me to go and stay with my mother until he could procure a house that my wife and I could live in. He did procure a house on Fifteenth street, south of the avenue, and I lived with father the winter and a portion of the spring.

39 Q. What were the circumstances under which you left your father's residence at the time of your leaving him?

A. At one time my brother Barton had received permission from my father to go out—that is, to be absent from the house. Before he did go it came to the ears of my brother Brooke, who went to my father and prevented Barton from going, and told him that he was behaving badly. Father then countermanded his request of permission to allow him to go. Then there was a difficulty between Barton and Brooke, and my wife came down stairs when they
438 were tusseling in the passage. My wife then told father the facts in the case, and Brooke and he had cross words. He abused father, and father went to his bed, stating he was not feeling well, and my wife went to see him and had his meals sent to him, and he said that he never expected this; that Brooke had everything in his own hands; that he had been treating him badly for some time, and that he was perfectly in his power. My wife sympathized with my father, and words took place between Brooke and myself. He insulted my wife, and I said to father that I would not remain in the house while a brother of mine would insult my wife. I sold my furniture and made arrangements to go to Baltimore, which I did soon after Grant's first inauguration, in 1869. After I went to Baltimore father wrote to me and said, in answer to a letter from my wife stating the reasons why she had left, that he was sorry; that he was perfectly controlled by Brooke and in his power; had been for some time.

439 Solicitor for the complainant objects to all of this testimony as incompetent and immaterial and scandalous.

40 Q. How long did you live in Baltimore?

A. I lived in Baltimore for nine (9) years.

41 Q. State the character of the relation between yourself and your father after your arrival in Baltimore, during your residence in that city.

A. Well, father made two (2) or three visits to me during the time that I was there. He said that he was sorry that we were compelled to leave Washington; that he had been ruled by Brooke for so long that he had placed his property into his name; that he had been warned by his oldest brother when he did it that he would regret

the day, and that he had regretted the day, and that he was completely under his, Brooke's, power—bulldozed by him. On one occasion I invited him to stay all night and he said that he
440 had not the money, and I said, "Father, I will pay it," and he did stay all night.

Solicitor for the complainant objects to the testimony last given.

42 Q. State any incidents that may have occurred in relation between your father and yourself until the time that you left Baltimore.

A. He said that Brooke had never allowed him any money, not even car money. He never could receive money to put into the church as contribution. I sent him on one occasion a pass to come to Baltimore and return. The old man had not money to pay his car fare there. I told him that I thought it was hard in his old days that he could not enjoy his property. He said that he had put his property out of his name on account of the family trouble to prevent Mr. Bradley, the attorney, from getting possession of it.

43 Q. Did you visit your father during the time that you lived in Baltimore, from 1869?

441 A. Yes, sir; I made two (2) visits here to see father.

44 Q. State anything that may have occurred in the form of incidents bearing upon the issues between the complainant and the defendant—yourself—during those visits.

A. Well, he always alluded to my having been compelled to leave Washington. I told him that I would not submit to Brooke's treatment.

45 Q. In what capacity were you employed during your residence in Baltimore?

A. I was receiving and manifest clerk of the Baltimore and Ohio railroad first. When I gave up my position I returned to Washington, and when the board of public works —, or before it smashed up, I went to Baltimore and got a position on the Northern Central railroad.

46 Q. After your employment by the Northern Central railroad in Baltimore what was your next employment?

A. I left Baltimore on account of my health. I had to give
442 up my position for the reason I came to Washington, and I remained here without any employment for some time. I was employed at one time by the Post Office Department—I think for a month or two, just in a temporary place—and then I was employed for a few months repairing the machinery, after the fire at the Patent Office.

47 Q. Were you ever employed by the board of public works in this city?

A. I was.

48 Q. How long were you employed by them?

A. I think for a year.

49 Q. Did you see your father a good deal or often during the time that you were in this employment of the board of public works?

A. Yes, sir; I did, every day.

50 Q. State anything that you may know showing the relation between the complainant in this cause and your father during this period of time—the period of time that you were so employed.

A. I used to visit father at his room, and he used to com-
443 plain of Brooke's treatment of him, and after I was appointed and made trustee he directed me, not only verbally, but in writing, to collect the rents and manage his affairs.

Solicitor for the complainant objects to the witness' testimony about directions, he having said that they were in writing.

A. (Continuing:) He wrote notice to one of the tenants, Foundery Place, and directed me to serve it upon them, which notice was that he had employed me as his agent, and that Brooke was no longer such, and directing them to pay the rents over to me. I did collect the rents for one month. I attempted to collect the rent from a house on High street, in Georgetown. I collected from two (2) or three (3) houses; others refusing to pay me, stating that they had not the money, and they did not know about paying me. I so re-
ported that fact to my father, and he went with me up to
444 Foundery Place the next month. Brooke had found in *in* the meantime that I had collected the rents. We met Brooke there, and he would say to the tenants, "Who rented you this house?" and the tenants would say, "You did;" then Brooke would say, "Pay the rents to me, then." Father said that is very true, Brooke has been acting as my agent, but you have been notified that he is no longer my agent, and I have instructed you, and now direct you, to pay this rent over to my son Leonard. Words took place and I considered that I had better not have anything more to do with it, as I did not wish to come in contact with Brooke, as there would certainly be a fight if I did. Father and myself went to Georgetown, and the same occur-*ance* happened there. Brooke threatened my father on the porch at the time, and I wanted father to let me put Brooke out of the house at the time. He knew that there was going to be trouble and what would take place, and he said that he would fix it some other way. Father said to the tenants at the time
445 that the property was not Brooke's, that it was his, and that Brooke was his agent.

Solicitor for the complainant objects to the answer.

A. (Continuing:) As another instance, I provided money for father, when he was living on Thirteenth street, to buy provisions; I paid for one month's rent of his room. He had at that time a pair of horses, a carriage, and a buggy which he had bought with a portion of the money that he had received on a mortgage of his property; that was the cause of Brooke's quarrel with father, as he considered that father had not any right to mortgage his own property. I paid for fixing up the horses' stalls; I paid money for the forage and paid money to the boy for taking care of the horses; I used the horses myself; father used to drive my sisters out very often at that time and before the trouble, and it was on that account that Brooke quarreled with father, for driving my sisters out. After father

446 directed me to take possession of his affairs and property some things that were stored in the frame building on Fourteenth — and New York avenue were brought to his room; one was — large clock that Brooke had put there; by his directions these were brought to him. I told father that the expense of keeping his horses and carriage could be ov-ided by renting the building to Mr. Naylor, who at that time kept a livery stable on New York avenue. He agreed with me, and I entered into a written agreement with Mr. Naylor for one year, giving him the use of this building to put his carriages in for the keeping of the horses and carriage, and when the horse and carriage ceased to exist, or rather if father sold them—if they were sold—that he would then pay the monthly rental of thirty-seven dollars and fifty cents ($37.50). I had advanced father at different times, I think, from three hundred and fifty to four hundred dollars. He said to me on one occasion, "My son, you have done for me; you have given me more money than Brooke did the whole
447 time he has had control of my property. Now," he says, "I want to make you a present," and I said, "Father, I gave it to you because I considered it my duty. I have seen how Brooke has acted, and you know that he has treated you badly." "Well," he says, "I drove your sisters out the other evening, and coming home late—my eyesight is fading me, and I almost ran into a wagon," and he says, "I am not going to drive any more. I might have killed those girls," and he says, "I give you the horses and carriage," and he gave them to me in writing. I used the horse every day while I was employed by the board of public works. I was superintendent of the work on Capitol Hill. I met father on one occasion while driving. He stopped me and asked me to give him, to bring him, the paper that he had given me for reference; that he would return it to me the next day. I put my hand in my pocket and gave it to him without thinking what I was doing,
448 but I think the next day I went to the stable and the horses and carriage were refused me. I could not get them out, and Mr. Naylor said that Brooke had instructed him not to let me have them. Soon after that I received an appointment under the Northern Central Railroad Company, in Baltimore, and I remained there for a year, I think, until my health was so bad that I had to give up my place.

Solicitor for complainant here enters and objection to the answer.

A. (Continued:) The reason that I could not get the horse and carriage was that, as father has told me since, Brooke had demanded the paper, and it was on Brooke's statement to him that I was a dissipated man, and he made him believe that I was one of the worst men in Washington, and that he was sorry that he ever acted in the way that he did. I asked him this question. I said, "Father, did you ever know me in your life to use a disrespectful word to
449 you?" He said that he never did; that Brooke had been a source of a great deal of anxiety to him, although he took his father's side in the case of his mother against him; that he believed it was for a selfish motive—to get possession of all his property.

Solicitor for the complainant here states that he objects to all this testimony as irrelevant and incompetent.

51 Q. Please state when you gave up your position in the Central Railroad Company, the cause of it, and where you have resided since that time.

A. It would be impossible for me to tell you at what time; I have no dates with me, but I have a memorandum at home by which to refresh my memory as to the date. I would state that I gave up my position on account of my health, and since then I have been living in Washington; my health has been such that I have not been able to fill any position since then.

450 52 Q. Please state, as near as you can remember, the date of your father's having been taken sick during his last illness, and where it occurred in this city.

A. I think it was on the ninth day of January, 1880, at the Riggs House; I was there at the Riggs House by appointment; I used to meet father there. He said he was feeling very badly; that he believed that it was caused by eating an oyster stew or oysters that day. I asked him to go in and take some whiskey or brandy, and he said, "No; I will not take anything." We stood there for about an hour. His suffering was so great that he said that he would have to go. On his way from the Riggs House he met my cousin, Brooke Williams. He shook hands with him and asked him if he believed that he was in his dotage; that he had heard that a report had been circulated by his son Brooke, and Brooke Williams' reply was, "No, cousin Brooke; you are not; your memory is as good as ever it was." We then proceeded down the avenue

451 until we arrived at Four-and-a-half street. Father then told me that if he felt better *that* he would meet me again, at nine (9) o'clock, at the Riggs House, where he had been accustomed to meet me when he did not meet me at my room. I wanted to go to the house with him, but he said no, that I might meet Brooke; that his object was to prevent Brooke from knowing that he was coming to see me. At nine (9) o'clock the next day I went to the Riggs House. I found that he was not there. I waited for some time, probably a half an hour. I then walked down the avenue, thinking that I would meet him when I got to Four-and-a-half street. I then went to his house—to his room. I found him sick in bed. I was surprised and asked him if he had a doctor, and he said that he had. I remained with him for some time before I left. I returned the next day. On each occasion he told me to avoid, if possible, meeting Brooke there; that he did not wish Brooke to know that

452 I visited him, as during my absence he would treat him badly. I went to see him every day, and on one occasion I went into his room as he was sitting up in his chair, feeling much better, but I found him very weak. Brooke was also in the room. I asked father how he felt, and he said that he was feeling better. I asked him what nourishment he had had that day, and he said, Not any. I asked him what time he dined, and he said, Not until five (5) o'clock; and I said, Father, you ought to have something to

take during the meantime, and he said, I manage to get along without it. I asked him what he ate for breakfast, and he said an egg and drank some coffee or tea, I am not positive. I said to him, Father, you ought to have something before five (5) o'clock, and I said, Let me go out and get you some milk. With that Brooke spoke up and said that I had better attend to my own business, and father said, Why, my son, your brother has a perfect right to come and see me.
453 He says, "Why, I don't think he has." He says, "He ceased coming to see you for a great many years," and he says, "I don't see why he should be poking himself in my room now." I replied—I said, "Brooke, I am not visiting you; I am coming to see father, and I have as perfect a right as you." Brooke replied that the room was his and that he paid for it, and said I, "If you do pay for it you pay for it out of father's money." Father then became excited and rose in his chair and he said, "Yes, you have all my money, and have had it for years, and now as your brother is coming to see me you want to abuse him." Father said to Brooke, You have treated me worse than all my children put together. Brooke then became very angry, and said that he would put the red flag on the lot on Fourteenth street and sell it—lot 7, square 223. I replied—I said, "Brooke, you know that you have no more right to go there and put a flag on that lot and sell it than to put it
454 on the dome of the Capitol." He then ordered me out of the room. Father said, "No; stay and protect me." He says, "You see how Brooke treats me. It is much worse when you are away, and when you are gone his treatment will be unbounded." Said I, "Father, I will stay here and protect you." I then turned to Brooke and I said, "Brooke," and looking at the clock at the same time, "I give you one-half an hour to take your bed and trapping and leave this room." He said that that portion of the room was his. I said, "I am not on your portion of the room, and after this request of father's to remain and protect him, and I demand you to leave the room," and in less than one hour after he had a colored boy and girl in there and these traps were taken out. I then stayed with father. After Brooke left father authorized me to go out and get him some milk, which I did. I went down the street and brought him some rich milk. He drank some. I poured some out in a glass for him. I then stayed with —
455 all the time for two (2) weeks or more until the time when it was said the overdose was given him. I took my meals there. My meals were brought to the room. I took here my breakfast and dinner. I had nothing but a lounge to lie on. I nursed him and gave him his medicines for two (2) weeks. My wife visited him on Sunday, the only day that she could come down. My sister, Mrs. Christy, sent pads to put in his bed. My brother Barton also sent him beef extract, from which I made him beef tea. I found, on invitation of father to take some of his first-class whiskey, that it was not fit to drink. I examined it, and father said that he had had this whiskey for some time; that it had been prepared by Brooke, and that these little red peppers had been put into it, and I have drank some mean whiskey, but I think it was the meanest

kind of whiskey that I ever drank. I never drank such whiskey as that. The old man had been drinking that whiskey when
456 the doctor recommended good whiskey. It was poor for a well man. I so reported it to the doctor. I gave him his medicine by order of the physician. I kept a strict account of when the medicines were given. Brooke never showed himself in that room for two (2) weeks, except when the physician came and only while the physician was there. My sisters came to see him. My brother-in-law, Dr. Owens, of the navy, came to see him. My brother Barton was there every evening after his office hours. I had to keep the fires up. I had to give him an enema every day. We wanted to get him a nurse and he said "no nurse could do for him as I was doing;" that Brooke always gave him his medicine with a jerk as he would give it to a dog. I prepared his medicine for him every day, and gave it to him and kept an account of it. I used to go out at twelve (12) o'clock for a half an hour, and sometimes I would stay longer, and I would do the same thing at night.
457 I was afraid — my health I would not bear nursing father without exercise. Snow was on the ground some part of the time. I remember of going home one time to change my clothes. I never took off my clothes while I was with father.

Solicitor for the complainant here states that all this testimony is objected to as irrelevant and incompetent.

53 Q. How long had your father been sick when you commenced to nurse him?

A. A week or ten (10) days.

54 Q. Did you visit him the week or ten (10) days regularly?

A. Every day.

55 Q. Can you tell, from your observation and from the character of the medicine that was given him, anything as to his disease?

A. Well, yes. During my nursing him an enema had to be given him to allow a passage. I only know, from what he said to
458 me, that he supposed it was from indigestion, and told me that that was the commencement.

56 Q. Was there any anodyne or opiate treatment?

A. Yes, sir; every four (4) hours.

57 Q. How long did you nurse your father?

A. For two (2) weeks or more; I am not positive.

58 Q. Please state your general observation during that time as to his physical and mental condition.

A. He was very weak at times; he could not stir in bed. I had to raise his head to give him his medicine. I could not give it to him with a teaspoon. My sister, Mrs. Christy, sent him a cup with a large spout to it. During the latter portion he was covered with bed sores, some as large as my two (2) hands; his whole body was covered with bed sores. He suffered with a great deal of pain from the time I commenced nursing him until the time I left him. He was afraid his groans would be heard all over the house. I
459 told him that I did not think so; that he was in a remote part of the house.

59 Q. Please state if your father talked much or any; and, if so, to what extent, during the time of your nursing.

A. At the latter portion he did not, because he was generally under the influence of his medicines and suffered with pain and talked very little. The first part he did talk some, but not much. I, of course, kept him quiet, except when my brother Barton came in the evening, when he would talk to him. He told me that he did not expect to get well; that he was an old man. I changed his clothing on one occasion. I wanted him to put on a clean shirt and he said that he would prefer that shirt. "Now," he says, "I have some things that would be probably of some use to you. I have a good number of cuffs that Brooke gave me. Brooke never gave me any clothes. I used to wear all his cast-off clothes—his cuffs and pants." He asked me to look in his pockets to see
460 what was in them. On this occasion I asked him for his overcoat. It was a rainy and disagreeable evening. I had not one of my own. He said, "Yes; look into my pockets and see what I have there." He says, "I think I have some change there; that I had better ride home." I found there were three (3) car-tickets there, and he says, "Those are the same car-tickets that you gave me." He said that a knife was there, and he said take that. He says, "Look into the drawer, and whatever I have take it home;" and he says, "Brooke won't let me keep anything;" and he says, "If I don't get well they are yours." I took his knife, his pencil, his cuff-buttons, and his gold spectacles. He directed me to use his overcoat and umbrella, and all these other things, and to keep them for him if he got well, and if he did not get well they were to be mine.

Solicitor for the complainant objects to the question as irrelevant and incompetent.

461 69 Q. Please state all that occurred, in regular order, to the best of your recollection, between your father and yourself at the time that you left—gave up the charge as nurse and left him.

A. On going home one evening there was quite a stir in the passage, and father asked what it was, and I told him that I did not know; and he says, "My son, I want you to be back soon; don't stay long;" and I says, "Father, it does not take me long to go home and come back, and I will make it as short as possible." He said that he was afraid that they were going to remove him; and I says, "What makes you think so?" And he says, "I am afraid that Brooke is going to do something to prevent you from staying with me." And I says, "No, I guess not." And I says, "Father, you would not allow yourself to be removed?" And he says, "Not if I can prevent it." I went home and on my return I found that father
462 was removed from the room up a flight of stairs into a smaller room, one-third of the size that he was taken from, with one window and a single bed stationed in it and some chairs and a wardrobe. You could hardly turn around in the room when the sofa was put in, which was for me, the first night. I went

up into the room and just as I got into the room Mrs. Coese met me.

61 Q. The landlady?

A. Yes, sir. She called me to her and said that it was wrong; that she had begged Brooke not to change it. I went in to see father and I asked him, "What did this mean?" And he said, "My son, they took me up bodily and moved me up here without asking me a question." And he says, "I am in the hands of Providence and he will protect me." And he says, "I was afraid that Brooke was going to do something." He said men were brought in and he was taken up on the mattress.

62 Q. Had you quit nursing your father previous to this time, or did you relinquish charge of him as nurse afterwards, or at what time?

463 A. I had not quit then, and I nursed and stayed with him that night. It was after dark that he was removed upstairs.

63 Q. State, as near as you can, when you gave up your charge as a nurse?

A. I think it was the following day.

64 Q. Please state what was the occasion or what the occasions, as you understood them, at the time of your relinquishing charge of your father as nurse?

A. I had been wanting father to have a nurse all along, but, in this instance, a nurse had been procured, as Brooke stated, by direction of the doctor, as the doctor had stated that as long as Brooke and myself did not "G," and Brooke would run to him with one story and I would tell him another when he came there, he thought it would be best to have a nurse. I told him I was agreeable and had always been. Father always objected, and thought that I could do better for him than any nurse—than a stranger, and he

464 told me that my health was bad and I had been suffering several days with the asthma. I gave him his medicine up to the time that Brooke said I gave him this dose. Brooke was sitting in the room.

65 Q. What dose?

A. The last dose that I gave him; this dose that Brooke insisted was an overdose that I gave him. I was very glad to give up as nurse, because I was in need of fresh air and so forth. Father made me promise to come and see him every day. Brooke was sitting in the room, and I showed Brooke a piece of paper with the hours on it in which he was to give the medicine. Just as twelve (12) o'clock came I poured out the medicine and gave it to him. Brooke was looking at me and father, and father was sitting on the bed. Brooke said: "You have given him a table-spoonful," and I said "Oh, no." With that Brooke jumped up and left the room, and father says "What is the matter," and I said "he accuses me of giving you a

465 table-spoonful instead of a teaspoonful," and he says, "I guess you have given me the medicine long enough to know how to give it;" and he says, "That is one of Brooke's plans to get you away from me;" and I said, "I guess not." He says, "You cannot see it; he is deep, and he is using this method of getting you away." I ran to the window and I saw him as he was leaving the

doctor's house; the doctor lived nearly across from the house. He left the doctor's house anyway and ran to the corner of Four-and-a-half street and then ran down Four-and-a-half, and I said, "I suppose he is going to the drug store," and a few moments afterwards he returned to the house and said, "that coffee must be given him." I went downstairs in the kitchen and coffee was being prepared. I told Brooke that "it was all foolishness, that I had not given him "an overdose." I told Mrs. Coese so in the presence of the cook who was standing there. I returned and I told father what had
466 to be given him. He says, "I will take it any way, it will not hurt me." Coffee was brought and Brooke wanted to give it to him, and father says, "Oh, no! let your brother give it to me." He drank a little—a half a teacup, I suppose. Brooke was very excited and said that he had been to the doctor's and the doctor was not at home, and the doctor did not come for some time afterwards. I think a couple of hours, or probably longer, the doctor came and gave him an emetic, and some other restoratives were given him while I was there. In the evening Dr. Gunnell came in to visit my father and he told me that as he came upstairs that Brooke had met him and said that an overdose had been given, and he went to father and I said, "Jim, look at father and see if there is any indication of an overdose." I think he came before the regular physician. He looked at his eye, turned up his eyelid, and said, "No," and father smiled and said, "Oh, no! all this is some of
467 Brooke's doings," and nothing more was said. Soon after Dr. Owens came and I told Dr. Owens and he examined him to see and looked at the medicine and said that there was no evidence.

Solicitor for the complainant protests against all this testimony as irrelevant and incompetent.

66 Q. Please state the conversation that last occurred between your father and yourself previous to his death.

Solicitor for the complainant objects to the question as incompetent.

A. Two (2) or three (3) days after the alleged dose, in the presence of my father and while Brooke was absent, he said to me: "Son, I have now a nurse to give me medicine, and I see the feeling existing between you and your brother," and he says, "I hope you will not have any unpleasantness here. I know both of your temperaments." I promised him that I would not. He said to me:
468 "You have my will and I wish you to carry it out, if I should die. I don't think that I will ever get well." He says, "I am always glad to see you." He says, "I shall ask you, as a favor only, to visit me for a few moments each day, as Brooke is very reluctant to your remaining with me at all." I said to him, says I, "Father, what shall I do with your overcoat?" I had it on that day. He says, "Keep it until I need it, for I do not think that I ever will." I think that was all that transpired. I think I went to see him once the next day, and I succeeded in seeing him, and on that occasion Mrs. Christy and Mrs. Virginia Scott had called to see him. Father

sent for me. I went down, and by father's order I brought Mrs. Scott to see him, and Mrs. Scott went up to see him, and during our visit these pains came on, and he asked her please to step out for awhile, and I often visited him every day. Sometimes I would go up to the room, and when I would rap at the door the nurse
469 would come and say, "Father is sleeping," and he would say "he was no better," and sometimes he would say "he was a little better." I came to see him every day. I had a night-key father had given me. The night-key I had to use to get into the house to get up to his door, otherwise I could not have gotten in, and once or twice I telephoned to the doctor. Right opposite from where I was living there was a telephone, and I used to telephone to doctor to ascertain how father was. At other times I was there to meet the doctor when I knew that he was visiting father.

67 Q. The doctor would be where?

A. At father's place sometimes, and sometimes I would miss the doctor and would go over to see him and inquire how father was.

68 Q. Do you mean to say that you went to see him during these days; that you went into his room and did see him?

470 A. I met the doctor at the door, and sometimes I would meet him in the passage.

69 Q. How long before the death of your father was it that you last saw him?

A. I did not see him after that conversation that I had with him.

70 Q. Please state why it was that you did not see your father, as best you understood it, at the time?

A. Well, I would go to the door, and the nurse would tell me that father was sleeping, and he was instructed by Brooke not to let any one see him.

71 Q. Can you state about how many times you called to visit your father without being able to get into the chamber where your father was?

A. Several times; I cannot remember how many; from the time of this last conversation up to and until the time of his death.

72 Q. Please state in what room was the occurrence of your having taken, at your father's request, the little trifles of cuffs, &c.,
471 and the overcoat that you referred to.

A. In the large room in the back building.

Cross-examination by W. WILLOUGHBY, Esq.:

73 Q. About what time was it that proceedings for divorce were instituted by your mother against your father?

Solicitor for the defendant, Leonard Mackall, objects to the question on the ground that the record of the case is the best evidence and only evidence.

A. The troubles commenced in the winter of 1859.

74 Q. Before the war?

A. Yes, sir.

75 Q. Did you take the side of your father or your mother in that controversy?

Solicitor for the defendant, Leonard Mackall, objects to the question, and on the ground that not being a party to said cause
472 the presumption of law is that he took no side in the case. He was in court under regular process of subpœna, and testified under the restraining influence of the law.

A. The side of my mother.

76 Q. Did all the rest of the children take the side of your mother, except Brooke?

A. Yes, sir.

77 Q. Brooke took the side of his father?

A. I suppose he did.

78 Q. After that time Brooke and his father lived together, did they not?

A. For awhile, and sometimes they did not live together.

79 Q. Did they not generally?

A. Yes, sir, I believe they did, except when they quarreled.

80 Q. You know, do you not, that your father expected to give his property at the corner of Fourteenth street and New York avenue to Brooke?

A. I do not. He always said that he never did.

81 Q. When did you first learn of that?

A. I learned it first when he made me trustee.

473 82 Q. Did you not know that he had so testified in the suit with Richards?

A. No, sir; I do not. I know that he had put his property out of his name on account of the family trouble.

83 Q. In whose name had he put it before he put it into yours?

A. In Brooke's name as trustee?

84 Q. You don't know of any writing in which Brooke was made trustee?

A. I never saw any.

85 Q. Did you ever hear of any?

A. I don't know that I ever did. I only know from what father said that he was trustee.

86 Q. Do you not know that Brooke claimed the rents and profits of that property?

A. No, sir.

87 Q. Do you not know that he had the rents of this property at the time?

A. He was collecting it as father's agent.

88 Q. Do you not know that he had the rents?

A. I know that he collected them as father's agent.

89 Q. You know that he had them?

A. No; I do not.

474 90 Q. Do you not know that Brooke was building at the corner around this lot?

A. No, sir. I knew that father was building. I knew that Brooke never did anything except by father's directions.

91 Q. Have any of the children lived with your father since 1859?

A. Yes, sir; Don Barton has and Benjamin has.

92 Q. How much of the time?

A. Benjamin and Don Barton lived with him before I went with him and during the time that I lived with him.

93 Q. How long?

A. Well, it was a year that I was with him, and I left Benjamin and Don Barton there—no, Benjamin was not there when I was there, but Don Barton was.

94 Q. Has your father and any of the girls lived together since that time?

A. No, sir; I think not.

95 Q. Did you testify as a witness in that divorce case?

A. I did.

475 96 Q. Did you testify as to your father's beating your mother?

A. I said that he struck her, but not for seventeen (17) years.

97 Q. How often did you say that he had struck her?

Solicitor for the defendant, Leonard Mackall, objects to the question on the ground that the deposition of the witnesses in that case is the best evidence and only evidence.

A. That I do not remember.

98 Q. Have any of the children except yourself done anything for the support of your father since 1859?

A. Yes, sir.

99 Q. Who?

A. Well, my sisters, Mrs. Owens and Mrs. Christy, sent him provisions—or rather sent him things during his sickness, medicine, beef tea, and other necessaries.

100 Q. Is that all?

A. I think so, to the best of my knowledge, not including myself.

101 Q. What have you done towards his support during that time?

476 A. Well, sir, during that time that I was made trustee I went to him when he was in a starving condition almost. I supplied him with all the necessaries of life. He had neither money nor food nor medicine. I have advanced him money to pay his car fare. I have given him money for little things, and I gave him money on one occasion to have his hair cut, and he said that Brooke never gave him anything. I have given him money to put in the contribution box at church, and I have taken him at different times things during his sickness. I used to bring things to him—things that were palatable to him. He could not eat for a long time and did not eat anything; he lived on milk.

102 Q. Is that all?

A. Yes, sir.

103 Q. That is all that you did for his support during that period?

A. No, sir.

104 Q. What else?

A. I got him an overcoat on one occasion when he was without an overcoat.

477 105 Q. Is that all that you can now state?

A. I believe that is all.

106 Q. Brooke and his father lived together most of the time, did they not?

A. Yes, sir.

107 Q. Don't you know of Brooke's giving to his father a new suit of clothes a short time before he was taken sick?

A. I know that he did not; he had not a respectable suit of clothes to put on his back.

108 Q. When did you first suggest to him the making of this will?

A. I never did suggest it to him?

109 Q. When did you first know of the making of this will?

Solicitor for the defendant, Leonard Mackall, objects to the question, as the will is not a paper among the files in this case.

A. The day that he handed it to me.

110 Q. When was that?

A. I think it was on the day that he made it, but I am not positive about it.

478 111 Q. Did you know anything about it before he handed it to you?

A. He said some time before that that he was going to make a will.

112 Q. Did you know what was to be the nature of the contents of that will?

A. Well, not particularly.

113 Q. Did you know anything about it?

A. I never knew anything of the will; I knew that he wanted the will made, and he told me that he was going to make one and was going to cut Brooke off; that Brooke had received large sums of money from him.

114 Q. You then talked it over with him before he made the will?

A. No, sir; well, he would say that he was going to make a will. "Well," says I, "father, if you are going to do it you can do it at any time."

115 Q. Before he made it you talked with him about it?

A. He talked with me; he said he was going to cut Brooke off.

116 Q. What did you say when he said that?

A. I do not know; I do not recollect now; I don't suppose I said anything.

117 Q. Did you say anything?

A. I don't remember.

479 118 Q. How many times did he say it to you?

A. Once or twice up in my room.

119 Q. Where were you then?

A. I was living on Twelfth street between H street and New York avenue.

120 Q. Was he stopping with you?

A. No; he used to visit me every day.

121 Q. Where was your father then?

A. He was living, I think, where Dr. Walsh lived; I think he was living where he died.

122 Q. Did you keep that will from that time until after your father's death?

A. I put it in the bank by his directions.

123 Q. Did you tell your father anything that Brooke had said about him?

A. I never heard him say anything. I have heard him say what he stated he said.

124 Q. Did you tell your father that Brooke had said that he was in his dotage and that he spoke of marrying some one?

480 Solicitor for the defendant, Leonard Mackall, objects to the question on the ground that it is not a proper mode of cross-examination.

A. Never in my life. On the other hand, father told me that the lady told him.

125 Q. What lady was it?

A. Mrs. Hunter; and such an occurrence never occurred during his sickness.

126 Q. Did you ever complain to your father that he had given this property to Brooke?

A. Never.

127 Q. There was a time, was there not, a short time, before your father was taken sick when there seemed to be a variance between your father and Brooke?

A. Yes, sir; father said that he and Brooke had not spoken for over a year.

Solicitor for the complainant objects to the last part of witness'*es* answer.

128 Q. Do you know of your father's saying to any one that you had got Brooke now so that he had not a dollar in the world?

481 Solicitor for the defendant, Leonard Mackall, objects to the question as leading towards new matter not touched on in direct examination and objectionable both as to the ground of it and the manner in which it is propounded.

A. Never; that never left my lips.

129 Q. At what time did you return from the South?

A. 1865.

130 Q. Where were you between 1865 and 1869?

A. I was in Bellefont.

131 Q. In 1869 you went to Baltimore, did you not?

A. I am not positive.

132 Q. But you said in your direct examination that it was directly after the inauguration of General Grant that you went to Baltimore?

A. Yes, sir.

133 Q. You say you stayed there nine (9) years?

A. Altogether I was there nine (9) years.

134 Q. How much of the time and where else were you
482 when not in Baltimore?

A. I was in the Baltimore and Ohio Railroad Company's office—let me see—four (4) or five (5) years. Then I returned to Washington and was employed in the board of public works, and then I returned to Baltimore again.

135 Q. And you remained there until 1878, did you?

A. I think I did.

136 Q. When you were working for the board of public works where did you live?

A. I lived at my mother's and stayed with my father for awhile.

137 Q. Where was your father then?

A. He was then living on Thirteenth street.

138 Q. Were he and Brooke living together?

A. No, sir.

139 Q. Was he living alone?

A. Yes, sir.

140 Q. Had he and Brooke been living together then?

A. They had been.

141 Q. Up to how long before that time?

A. Well, I think it only occurred a few days before I was made trustee.

483 142 Q. What occurred?

A. Brooke left him.

143 Q. Then Brooke did live with him during that time up to about the time that you were made trustee?

A. I think he did, sir.

144 Q. How long did they live apart?

A. Several months.

145 Q. After that?

A. Yes, sir.

146 Q. During that time did the old gentleman live alone?

A. Yes, sir.

147 Q. Who supported him then?

A. I supported him for awhile.

148 Q. What did you do?

A. I paid for his meals. He did his own cooking in his room. He was not able to get his meals outside, and never did, even when Brooke was living with him. He was only allowed little triblets—a small piece of steak and a few things—and he did his own cooking in his own room. Brooke never allowed him to go to a boarding-house to take his meals at that time, he said.

149 Q. You nursed him during his first two (2) weeks of his sickness?

484 A. Yes, sir; not the first two (2) weeks; I did not go to nurse him until a week or ten (10) days after he was taken sick. I used to go to see him, but after I was told by him not to leave the room I nursed him for two (2) weeks, if not longer.

150 Q. And then occurred this difficulty about the overdose?

A. Yes, sir.

151 Q. And then you left?

A. Yes, sir.

152 Q. And this is the last that you saw of your father, except this conversation of a few days after?

A. Yes, sir.

153 Q. When you heard this noise in the hall that you speak of did you go to see what it was?

A. No, sir. I did not hear the noise. Father told me that there was a noise.

154 Q. Why did you not go to see what it was?

A. It was not my business to go and see a noise in another part of the house.

155 Q. I think you said it was in the hall?

485 A. There was a little hall. Father said that he heard it; that he heard some whispering.

156 Q. You did not go to see what it was?

A. No, sir.

157 Q. You went away from the house without making any inquiry as to what it was?

A. Yes, sir.

158 Q. Did you not know what it was?

A. No, sir; I never did.

159 Q. What time was it that you went away that day?

A. It was just about dark.

160 Q. When did you go back?

A. I don't think I was gone an hour.

161 Q. When you came back you found that your father had been removed?

A. Yes, sir.

162 Q. Was Brooke with him?

A. Not when I went to see him; he was not in the room, but came in a few minutes afterwards.

Adjourned till one (1) o'clock p. m. to-morrow, Tuesday, October 31, 1882.

(S'g'd) EDWIN FORREST, *Examiner.*

486 TUESDAY, *October* 31, 1882—one (1) o'clock p. m.

Met pursuant to adjournment and adjourned till to-morrow, Wednesday, November 1st, 1882, at one (1) o'clock p. m.

(S'g'd) EDWIN FORREST, *Examiner.*

WEDNESDAY, *November* 1, 1882—one (1) o'clock p. m.

Met pursuant to adjournment and adjourned till to-morrow, Thursday, November 2d, 1882, at ten (10) o'clock a. m.

(S'g'd) EDWIN FORREST, *Examiner.*

THURSDAY, *November* 2*d*, 1882—ten (10) o'clock a. m.

Met pursuant to adjournment.

Present: W. Willoughby, solicitor for the complainant, and R. M. Newton, of counsel for defendant, L. Mackall.

Whereupon the further cross-examination of the witness, LEONARD MACKALL, was resumed as follows:

By W. WILLOUGHBY:

487 163 Q. Where did your father and family live in 1859?

A. Nineteen hundred and five (1905) Pennsylvania avenue.

164 Q. How long did they live there?

A. I don't remember when they moved from Georgetown. My mother lived there until she died.

165 Q. How long did your father live there?

A. He lived there from the time he moved from Georgetown until the summer or fall of 1861, I think.

166 Q. Where did he go then?

A. I do not know where he went from there; I think he moved somewhere on the avenue between Seventeenth street and Eighteenth street.

167 Q. Pennsylvania avenue, between Seventeenth street and Eighteenth street?

A. I think so; somewhere along there.

168 Q. Do you not know?

A. I am not positive; I could not tell you what house; I know it was somewhere along there.

169 Q. How long did he live there?

A. That I cannot say.

170 Q. Do not you know where your father lived any time between 1860 and 1865?

A. Oh, yes; in 1865 he lived on Twelfth street, near the avenue.

488 171 Q. Who lived with him there?

A. My brother Barton lived with him; I am sure that Brooke lived with him; I am not sure whether Benjamin was there or not; I think he was.

172 Q. How long did they live there?

A. That I cannot tell.

173 Q. When did you first know after that of the residence of your father?

A. He lived at Mrs. O'Brian's, on Thirteenth street.

174 Q. When?

A. He lived there in 1873 and 1874.

175 Q. Then, between 1865 and 1873 and '74 you cannot state very definitely where he did live?

WITNESS: Between what dates?

W. WILLOUGHBY: Between 1865 and 1874.

A. Not definitely; I know that in 1865 he lived on Twelfth street; I know that he lived in the summer of 1873 and '74 on Thirteenth street, and afterwards I know he lived on C street, where Dr. Walsh lives, and took his meals at Mrs. Corse's and afterwards moved there.

176 Q. When did he go to Mrs. Corse's?

A. That I cannot tell you. Do you mean to room?

489 W. WILLOUGHBY: Yes.

A. After my mother's death, because I know he was living at the house where Dr. Walsh lives now, because I went down there.

177 Q. When did he go to Mrs. Corse's?

A. That I cannot say. I know that he went there after mother's death, but I cannot tell the day.

178 Q. What time did your mother die?

A. She died in the spring of 1879.

179 Q. Did he go to Mrs. Corse's after that?

A. Yes, sir, He went there to room.

180 Q. After your mother's death?

A. Yes, sir.

181 Q. Was he not moving there before?

A. Not that I am aware of.

182 Q. Where was he between 1874 and 1879?

A. I think he moved from Thirteenth street down on C street, where Dr. Walsh lives now, and from there to where he died.

183 Q. State where he was between those two (2) dates.

A. I have just told you.

184 Q. You say he went to Mrs. Corse's after your mother's death in 1879. Is that so?

A. Yes, sir.

490 185 Q. Where was he before 1879?

A. That I do not remember. I think he moved from Thirteenth street down on C street.

186 Q. Did you ever have any communication with your father between 1859 and 1865?

A. I saw him at certain times.

187 Q. How often?

A. After I went to Baltimore, on one (1) or two (2) visits that I made here I saw him.

188 Q. Where were you between those two (2) dates?

WITNESS: Where was I?

W. WILLOUGHBY: Yes.

A. In Baltimore, and I came backwards and forwards.

189 Q. Were you not South during those dates?

Solicitor for the defendant, Leonard Mackall, objects to the question upon the ground that the location of the witness after 1861 has already been stated as having been in the South.

A. I went South in the spring of 1862 and returned in 1865.

491 190 Q. Then, you were not in Baltimore at that time?

A. No; I was not.

191 Q. Did not your father go to Mrs. Corse's about 1874?

Solicitor for the defendant, Leonard Mackall, objects to the question as entirely unfair treatment of the witness and an attempt to unnecessarily embarrass him.

A. He did not.

192 Q. Do you not know that he was there when the ejectment suit was commenced?

A. Yes; but that was not in 1874.

193 Q. When did you first go to see him after he went to Mrs. Corse's?

Solicitor for the defendant, Leonard Mackall, objects to the question, as it is already answered and the rights incident to cross-examination are limited to the province of correcting any errors that the witness may have made on the direct.

A. I paid him two (2) or three (3) visits. I remember one
492 visit particularly in the evening when the ladies were sitting out in the yard.

194 Q. When were those?

A. I cannot remember. It was in the summer, but I do not remember what year or anything about it.

195 Q. Was it before or after your mother's death?

A. It was before mother's death.

196 Q. When was it that he had those horses and carriages of which you speak?

A. In 1873 and '74.

197 Q. Did he have them at the time that you went there in 1874?

WITNESS: Went where?

W. WILLOUGHBY: To your fathers, and had this deed of trust made to you.

A. In the summer of 1873 he had them.

198 Q. Did he have them in 1874?

A. No; I had them in 1874. He had made them over to me in writing.

199 Q. Did he have them at the time that the deed of trust was executed?

A. He did.

200 Q. Did he make them over to you after that?

A. Yes, sir.

201 Q. That was the time that he was starving, was it?
493 A. Yes sir.

202 Q. What did you give him when he made the horses and carriage over to you?

Solicitor for the defendant, Leonard Mackall, objects to the question on the ground that the transfer of the horses and carriage has already been stated to have been given as a mere gift and in consideration of love and affection.

A. I gave him nothing at the time; I gave him something before that.

203 Q. Have you the writing?

A. No, sir.

204 Q. Where is it?

A. I expect Brooke has it; it was taken out of father's pocket.

205 Q. How long had Brooke and his father been separated when that deed of trust was executed?

A. Some months.

206 Q. State how long, as near as you can?

A. I cannot state; it was less than a year, I think.

207 Q. Was it three (3) months?

494 A. That I cannot say.

208 Q. Was it a month?

A. Yes, sir; it was.

209 Q. Would you say it was two (2)?

A. I could not say how many.

210 Q. Would you say it was two (2) months?

A. That I cannot say to my knowledge.

211 Q. How long after that did they continue to be separated?

WITNESS. After the trusteeship?

W. WILLOUGHBY. Yes, sir.

A. That I cannot say; several months probably.

212 Q. Two (2) months?

A. That I cannot tell; I did not keep any record of it; I did not keep any memorandum of it.

213 Q. Would you say it was two (2) months?

A. At this time I do not remember.

214 Q. Would you say it was two (2) weeks?

A. No, sir; I would not say it was two (2) days, because I do not remember.

215 Q. When did you say that you first knew that Brooke claimed the Georgetown property?

A. I never knew that he claimed it?

216 Q. Did you not know that there was a deed made to him?

495 A. No, sir.

217 Q. By the corporation.

A. I know that father allowed the taxes to be unpaid.

Solicitor for the defendant, Leonard Mackall, here enters his objection to the two proceeding questions upon the ground that this is not the best evidence; either the deed must be produced or a certified copy from the record.

218 Q. Did you not know of a deed being made in 1867——

A. No, sir.

219 Q. By the mayor of the city of Georgetown to Brooke Mackall, Jr., for this property?

WITNESS: Did I know of it in 1867?

W. WILLOUGHBY: Did you ever know of it?

A. I have seen copies of those deeds.

220 Q. When?

A. Since father's death.

221 Q. Did you ever before?

A. No, sir.

222 Q. Look at that deed and see if it is not in your hand-
496 writing.

(Counsel for complainant here hands paper to witness.)

A. (After looking at said paper:) This is my own handwriting.

223 Q. When did you make that copy?

Solicitor for the defendant, Leonard Mackall, objects to the question without the production of the original deed, and says that it is competent for the counsel for the complainant, by producing the *bona fide* deed, to conclusively show from it, as testimony already adduced, the handwriting of the witness and of its signing, sealing, and delivering.

A. I do not remember anything about it. I do not think it is a deed at all. There is interlining there of father's in his handwriting in pencil, and there are omissions which make it an incomplete deed.

224 Q. What is the date of it?

A. Fourteenth day of October, 1867.

225 Q. Will you look at this memorandum and tell me what it is?

497 Solicitor for the defendant, Leonard Mackall, objects to the memorandum as not evidence, unless to refresh the memory of the witness, and there is nothing which has already been adduced to call for memorandum to refresh the memory of the witness, and further objected to on the ground of its being totally unfair treatment of the witness, and objects to his answering.

A. I do not know anything about it. Some is in my handwriting and some is not. The date is not my handwriting.

The complainant, by his solicitor, offers the memorandum, of which the following is a copy, in evidence:

"FEBRUARY 9.

"One dose 10 to 12; second dose, at 3.15 a. m.; third, at 7 a. m.; fourth, one table-spoon, 12 m."

And asks the witness:

226 Q. If that is in his handwriting?

A. No, sir; it is not.

227 Q. Is any part of it in your handwriting?

498 Solicitor for the defendant, Leonard Mackall, objects to the production of either a copy or the original of the so-called "memorandum."

A. Yes, sir; I think it is.

228 Q. What part?

A. All but the date.

229 Q. When did you make it?

A. That I do not know. I have got the memorandum of that dose.

Solicitor for the defendant, Leonard Mackall, here protests against this offer to adduce testimony in the form of this memorandum as

an entirely useless consumption of time of the sitting, and seemingly for a purpose totally at variance with the issue between the complainant and the defendant, Leonard Mackall.

WITNESS (continuing): That is a forgery. I have the one of that date.

230 Q. What do you mean by its being a forgery?

A. It is fraudulent of this date.

231 Q. You made it, did you not?

499 A. I don't think I did, but it looks like my handwriting.

232 Q. Did you make that or not, except the date?

A. That I do not know; not for the purpose of giving medicine at any rate; it is a fraudulent transaction; it is a forgery.

233 Q. Did you ever make it?

A. No, sir.

234 Q. Do you swear here that that memorandum is not in your own handwriting, except the date?

A. No; I would not swear that is not in my own handwriting; the date is not; I will swear to that.

Solicitor for the defendant, Leonard Mackall, objects to the introduction by the solicitor for the complainant of the word "swear" in his last question, as the witness is already under oath.

WITNESS (continuing): That date is in Brooke's own handwriting.

235 Q. I am not asking you anything about the date.

A. No, sir.

500 236 Q. What does that memorandum of "table-spoon at 12 m." mean?

A. I do not know.

237 Q. Did you keep a *a* memorandum of doses given by you?

A. I did.

238 Q. Have you the memorandum with you of that day?

A. Yes, sir.

239 Q. Have you it with you?

A. Mr. Newton has it *is* his possession.

240 Q. Will you show it?

A. If Mr. Newton has it and can find it.

241 Q. (Addressing solicitor for defendant, Leonard Mackall.) Mr. Newton, will you produce it?

Mr. NEWTON: I object to the whole of this testimony on the ground already stated; and, having no reason to object to the introduction of the memorandum that witness has reference to, I suggest as an explanation that, having numbers of papers in this cause, *that* such small matter as that memorandum—I cannot place my hands on it at this present time.

501 242 Q. I will ask Mr. Newton if he will produce it?

Mr. NEWTON: I will produce it if it can be found, and am anxious to have it produced, as much so as counsel for the complainant.

WITNESS: That memorandum I took the next day; why I took it I don't know.

243 Q. What memorandum?

A. Of the medicine that it is said that I gave him an overdose. I was in the room the next day and *to* took it off the mantel-piece and put it in my pocket. I have that memorandum, and I have a great deal more important than that in my own handwriting.

244 Q. Was that the date that the occurrence took place when you are charged with giving an overdose?

Solicitor for the defendant, Leonard Mackall, objects to the question on the ground that nothing touching the alleged overdose has been adduced on the direct examination of this witness.

502 A. I do not know the date of the memorandum.

245 Q. The date of the memorandum is February 9. I mean was February 9th the date?

A. I cannot say.

246 Q. Was it the date on which you were discharged?

A. I never was discharged.

247 Q. Was it the day on which you left?

A. It was the last day that I gave him the medicine.

248 Q. Was it the day on which you left?

WITNESS: What do you mean?

W. WILLOUGHBY: The day on which you left your father.

A. I was there the next day.

249 Q. Was it before or after your father was removed upstairs?

WITNESS: What?

W. WILLOUGHBY: This occurrence that we are talking about.

A. It was after he was moved upstairs.

WITNESS: You mean the so-called overdose?

W. WILLOUGHBY: Yes.

A. It was after he was moved upstairs.

250 Q. Why did you leave if you were not discharged?

503 A. Because a nurse took my place.

251 Q. Did you not understand that your father requested you not to be there?

A. No, sir; he never did.

252 Q. Were you not so informed?

A. Never.

253 Q. (Showing paper to witness). Look at that letter and say whether that is not in your handwriting?

A. Yes, sir; that is my handwriting; I wrote that letter.

Solicitor for the defendant, Leonard Mackall, objects to the introduction of that letter unless it is going to be introduced as evidence, and says that he shall instruct his client to answer no questions connected with the letter unless it is introduced in evidence.

Solicitor for the complainant here offers and puts in evidence a copy of said letter, and the same is marked as Complainant's Exhibit B. M., Jr., Y No. 1 and made a part hereof.

504 254 Q. Did you ever apologize to your father for having giv*ing* testimony against him in that divorce case?

Solicitor for the defendant, Leonard Mackall, objects to the question as to testimony in the divorce case upon the ground that the record embracing the depositions of the defendant, Leonard Mackall, is the best evidence.

A. I have.

255 Q. Look at this letter (showing letter to witness) and state whether that is your writing.

A. It is.

Solicitor for the complainant here offers and puts in evidence a copy of the said letter last referred to, and the same is marked as complainant's Exhibit B. M., Jr., X No. 2 and made a part hereof.

To the making a copy of said letter an exhibit the solicitor for the defendant, Leonard Mackall, desires that the record shall show that no objection is made on the part of his client.

505 256 Q. Did you ever ask Mr. Christy and his wife to join with you in bringing a suit against Brooke Mackall to set aside this deed to Brooke of 1880?

Solicitor for the defendant, Leonard Mackall, objects to the question purely from the stand-point of its legal impropriety; that the matter upon which the question is addressed has not been adduced in direct testimony.)

A. I think I did.

257 Q. Did they accede to your request?

A. They did.

258 Q. Did they join with you in said suit?

Solicitor for the defendant, Leonard Mackall, objects to the question upon the ground of a professional right, as attorney of record in this case and in the case referred to by the counsel for the complainant, to state that he understood, at the time of the insti-

506 tution of the suit alluded to by the counsel for the complainant, that he was retained, substantially, by Mrs. Christy and made her a defendant, for reasons of propriety as due from a gentleman to a lady, merely *pro forma.*

A. Mr. Christy prepared the first papers.

259 Q. Answer the question.

A. Yes, sir; they did.

260 Q. Where is the suit pending?

Solicitor for defendant, Leonard Mackall, objects to the question propounded as to joinder of Mr. Christy upon the ground of the statute and analogous practice in equity relating to proprietory rights, separate and distinct of married ladies in this District.

A. It is of record—on file.

261 Q. In the District of Columbia?

A. Yes, sir.

262 Q. Do you mean to say that Mr. Christy and his wife joined with you as complainants in that bill?

Solicitor for the defendant, Leonard Mackall, objects to the
507 question on the ground that the bill itself is the best evidence.

A. Mr. Christy joined with me in spirit, but not in fact.

263 Q. Do you mean to say that Col. Christy prepared a bill to file?

A. He did.

264 Q. For the purpose of setting aside that deed?

A. He did.

265 Q. Where is that bill?

A. Mr. Newton can produce it.

266 Q. Will you produce it, Mr. Newton? (Speaking to the solicitor for the defendant, Leonard Mackall.)

Mr. NEWTON: At the proper time.

Mr. WILLOUGHBY: Now is the proper time.

Mr. NEWTON: I am not a witness in the case. I will produce a rough sketch of the bill prepared by Col. Christy and prior to the institution of the suit referred to, and state that Col. Christy had prepared it as memorandum and as an older lawyer for Mr. Davenport to file a bill on to set aside the deed of February 27, 1880, al-
leged to have been executed by the late Brooke Mackall to
508 the complainant in this cause.

267 Q. Did you take your bill from that?

Mr. NEWTON: No, sir. My humble notions, based on experience in the practice of the law, is for every lawyer to digest his own cause and frame his own pleadings.

268 Q. (To the witness.) Did any of your brothers or sisters suggest to you that you institute proceedings to set aside the deed?

Solicitor for the defendant, Leonard Mackall, objects to the question as an insinuation and intimation of the want of proper authority embraced in a retainer in the technical sense of retainer from the parties to this suit referred to to himself, and upon the ground, as previously stated, that the bill is the best evidence.

A. All of them did.

269 Q. Did their husbands also do it?

A. Yes, sir.

509 270 Q. Did they suggest it to you or did you suggest it to them?

A. They all agreed to it.

271 Q. Did you suggest it to them or they to you?

A. They suggested that I should bring the suit.

272 Q. Did you suggest it?

A. They did.

273 Q. Did you?

WITNESS: To them?

W. WILLOUGHBY: Yes.

A. No; I did not; my sisters advanced me some money to pay it.

274 Q. What has been your occupation for the last four (4) or five (5) years?

WITNESS: What has been my occupation?
W. WILLOUGHBY: Yes.

A. My health has been in such condition that I have not been able to fill any position.

275 Q. Have you done anything?

WITNESS: For the last four (4) or five (5) years?
W. WILLOUGHBY: Yes.

A. For a few months I have. Do you want to know how I am supported?

W. WILLOUGHBY: Yes.

510 A. I am not supported by Brooke, as he says I am.

276 Q. How are you supported?

A. I am supported by my wife.

277 Q. By her labor?

A. Yes.

278 Q. Who wrote the will that was made by your father?

Solicitor for the defendant, Leonard Mackall, objects to the interrogatories addressed to the will upon the ground previously given that the will is not a paper in this case.

A. Mr. Davenport.

279 Q. Did you see Mr. Davenport about writing it?

A. Yes, sir; I did at my father's request; he directed me to.

280 Q. Were you present when it was drawn?

WITNESS: When the will was drawn?
W. WILLOUGHBY: Yes.

A. No, sir.

281 Q. Did you suggest to Mr. Davenport what should be the terms of the will?

A. Not at all.

511 282 Q. Did you at your father's request?

A. I did not.

283 Q. Did you tell any one of the contents of that will after it was made and before your father's death?

A. I don't think I did.

284 Q. Did you mention to your brothers or sisters or any one else anything about the nature of that will before your father's death?

A. By his direction I did. He told me to tell them that he had made a will. I put it in bank until after his death, when I took it out.

285 Q. Did you mention it to Mrs. Corse?

A. Never.

286 Q. Did you not say to Mrs. Corse that you had fixed everything so that Brooke would not have bread in case your father died?

A. No, sir.

287 Q. Did you not say that in the presence of a servant of Mrs. Corse?

A. No, sir.

288 Q. Did you ever speak of it to anybody?

A. I suppose I did.

289 Q. To Mrs Corse?

A. I do not think that I ever did.

512 290 Q. Did you tell Mrs. Corse that Brooke had spent a large amount of your father's money?

A. Oh, yes; I think I did.

291 Q. Did you speak of the amount?

A. Oh, no; I never heard of the amount then; it was a large amount; I have heard father state but I never knew myself; I only knew what father told me.

292 Q. Were you not asked by your father to give up your trusteeship?

Q. I was.

293 Q. When?

A. I do not remember. Brooke has the paper there.

294 Q. Was it in 1878 or about that time?

WITNESS: Let me see that paper, please.

(Upon paper being shown the witness he — :)

A. I guess it was about that time; Brooke has the letter that I wrote him, father, who said that Brooke had taken the letter.

295 Q. Was the deed prepared by your father to make Mr. Bradley trustee?

A. Yes, sir.

513 (Upon paper being shown the witness, he says:)

I never saw him sign. I never saw this before. He came to me, but I refused to sign, and wrote him a letter telling him that the time would come when he would thank me as a son for not signing it, and that time did come.

296 Q. Did you testify in that divorce suit, speaking of your father, as follows: "I saw him strike her (meaning your mother), with his hand." Did you testify to that?

Solicitor for the defendant, Leonard Mackall, objects to the question upon the ground of its total unfairness and want of accord with precedent and the practice, and as wrong in theory, as the record in the case upon which the question is propounded settles the fact embraced in that question as to the testimony of the witness, and it is, secondly, entirely contrary to the practice, if the complainant's counsel means it as a method of impeaching the testimony of the witness.

514 A. Yes.

297 Q. Did you say that he did several times in the presence of his children?

A. I do not remember about that.

298 Q. Did you not say that he had been whipping his wife for seventeen (17) years?

Solicitor for the defendant, Leonard Mackall, objects to the question for the reasons last stated.

A. No, sir; I would like to make an explanation. Father has stated to me since that Brooke was telling him that I did; that he had never himself seen it in the record, and you may say that Brooke said you said so, and that Brooke made me believe it.

299 Q. Did you not testify in open court?

Solicitor for the defendant, Leonard Mackall, objects to the question, as the record shows that this proceeding was a regular one in chancery before an examiner.

515 A. I did, but I never testified to that; my testimony in open court is in writing.

300 Q. Do you say now that your father rented the house on Fifteenth street, or was it rented by Brooke?

A. It was rented by Brooke as father's agent. He always attended to father's business. Brooke never had any money to rent a house.

301 Q. Was that in writing?

A. I think it was, but it never was paid for.

302 Q. Will you swear that it never was paid for?

A. It was not paid for, and Mr. Ulke told me so himself.

Solicitor for the defendant, Leonard Mackall, objects to the form in which the last question was put, and as a method of threatening the witness.

303 Q. Please look at the lease dated the seventeenth day of October, 1868, between Henry Ulkey and Brooke Mackall, Jr.,
516 and will you now, after looking at said lease, say that this renting was by Brooke Mackall, Jr., as the agent of your father?

Solicitor for the defendant, Leonard Mackall, objects to the question, and says that he must protest against this proceeding; that the witness has already answered as to the character of the complainant in the capacity of manager for his father, and the question is simply put to "catch" the witness.

A. Yes; I do. He has not got the word trustee that he gave in his receipts. I never saw this before (referring to the lease then in his hand dated October 17, 1868, and referred to in the last preceding question). I know that Brooke rented it as father's agent, although it does not say as father's agent.

Solicitor for the defendant, Leonard Mackall, here enters a further objection to the question last put, and upon the ground dis-
517 tinctly that every inference from the issue between the complainant and the defendant, Leonard Mackall, in this cause goes to show the incapacity of Brooke Mackall, the complainant, to have signed any receipt and placed thereto the word manager or

agent, as he was, by necessary conclusion of common sense, based upon his relation to his father, as seen, simply manager for his father, having no fiduciary or legal capacity.

304 Q. Don't you know that the Foundery property was in the name of Brooke Mackall, Jr.?

Solicitor for the defendant, Leonard Mackall, objects to the question upon the ground that the original deed of conveyance or a certified copy of it from the records is the best evidence as to in whose name the property is held.

A. No, sir.

305 Q. Will you say that it is not?

518 Solicitor for the defendant, Leonard Mackall, here directs the witness not to answer the question.

Solicitor for the complainant here offers and puts in evidence a certified copy of the deed of trust referred to, and the same is accordingly marked as Complainant's Exhibit B. M., Jr., Z No. 3, and made a part hereof.

306 Q. Now, do you not know that Brooke Mackall built the house on that Foundery property alone?

A. He built them as father's agent.

307 Q. Now, how do you know that he built them as your father's agent?

A. Father told me so.

308 Q. Is that the only way that you know?

A. Yes, sir; it was father's property that he built it on.

309 Q. Have you negotiated with Richards to settle this controversy with you?

Solicitor for the defendant, Leonard Mackall, objects to the
519 question for two (2) reasons: 1st, the two several issues embraced in the cause No. 8118, Mackall *vs.* Richards and others, between the complainant and the defendants, respectively, Richards and L. Mackall, are absolutely one from the other distinct and separate; 2nd, because the issue between the complainant in this cause and Leonard Mackall is simply based upon, first, the capacity in which the defendant, Leonard Mackall, is sued as brother of the complainant, and, secondly, in the capacity as trustee of the late Brooke Mackall. The issue originated in the fifth prayer of the bill praying for a decree requiring the defendant, Leonard Mackall, to execute a deed of conveyance to the complainant herein. The issue between the complainant and the said defendant, Leonard Mackall,
520 leaves no possible inference that Leonard Mackall had any right, subsequent to the decision of the case of Leonard Mackall, trustee, against said Richards, referred to in this record, to negotiate with said Richards.

A. No, sir.

310 Q. Did you not understand that terms could be effected with him without a lawsuit?

A. I do not know that I ever did.

311 Q. Did you not state that "I have ascertained that terms can be effected with Richards which will not cost a lawsuit?"

Solicitor for the defendant, Leonard Mackall, objects to the question on the ground of unfairness, and that it is apparently based upon a written manuscript in the hands of counsel for the complainant, and unless it is produced in evidence either in the form of a letter or memorandum to refresh the memory of the witness he objects to the question.

Solicitor for the complainant says that the question is not insisted upon.

521 312 Q. How many children did your father have at his death?

A. Six (6).

313 Q. Were there any of them depending upon him for support?

A. None but Brooke.

314 Q. Do you swear that Brooke was depending upon him for support at his death?

Solicitor for defendant, Leonard Mackall, objects as to the form of the interrogatory in using the word swear as a quiet way of threatening the witness as to the obligation of his oath.

A. To the best of my belief it is true.

315 Q. Was your father engaged in any business?

A. No, sir.

316 Q. Had he earned any money during the last five (5) years?

A. Yes.

317 Q. In doing what?

A. Twenty-seven hundred dollars ($2,700) that he received and six thousand dollars ($6,000) that he drew from the Depart-
522 ment; that was the money that was supporting Mr. Brooke and father.

318 Q. Is that what you mean about his being dependent upon his father for support?

A. Yes, sir; he has got that money now.

Solicitor for the complainant here announces that he is through with the witness, and turns him over to the counsel for the defendant, Leonard Mackall.

Adjourned till Saturday, November 4th, 1882, at ten (10) o'clock a. m.

(S'g'd) EDWIN FORREST, *Examiner.*

SATURDAY, *November* 4, 1882—ten (10) o'clock a. m.

Met pursuant to adjournment and adjourned till notice.

(S'g'd) EDWIN FORREST, *Examiner.*

THURSDAY, *November* 16, 1882—ten (10) o'clock a. m.

523 Met pursuant to notice and adjourned til- to-morrow (Friday, November 17th, 1882) at ten (10) o'clock a. m.

(S'g'd) EDWIN FORREST, *Examiner.*

FRIDAY, *November* 17, 1882—ten (10) o'clock a. m.

Met pursuant to adjournment.

Present: W. Willoughby, solicitor for complainant, and R. M. Newton, solicitor for defendant, Leonard Mackall.

Whereupon the witness, LEONARD MACKALL, was produced, and on redirect examination testified as follows:

By R. M. NEWTON:

Q. Touching the subject of the suit for divorce of your mother against your father, was it or was it not instituted in 1861?

(Solicitor for defendant, Leonard Mackall, here produces and hands to the witness the original bill filed in the case to refresh his memory as to the date.)

A. Yes, sir; it was filed January 7, 1861.

Q. Would or would not the deposition of yourself in that
524 case be the only means of certifying what you know as to the time of the beginning of the trouble that resulted in the institution of that suit?

A. Yes, sir.

Solicitor for the defendant, Leonard Mackall, here offers and puts in evidence the deposition of Leonard Mackall in said divorce suit of Martha Mackall against Brooke Mackall, and the same is accordingly marked as Defendant L. Mackall's Exhibit L. M. No. 1.

Solicitor for the complainant objects to the introduction of the said deposition in evidence as incompetent.

Q. You state in your deposition, which was taken in the spring of 1862, that until the winter previous you had been away from home a good deal. Were you or were you not living from the fall of 1860 to the spring of 1861 at Bellefont, Pennsylvania?

A. I was.

525 Q. From the spring of 1861 to the spring of 1862 were you or were you not residing at home with your parents, No. 1905 Pennsylvania avenue, in this city?

A. I was.

Q. When did you leave for the South?

A. In the spring of 1862.

Q. When did you return from the South—what month and year?

A. August, 1865.

Q. You were living with your parents in 1859?

A. Yes, sir.

Q. After the commencement of the trouble between your father and mother, in 1859, did or did not your father and the complainant in this cause live together, separately and apart from the rest of the family, in separate apartments of the house No. 1905 Pennsylvania avenue?

A. They did.

Q. Do you consider that you took the side of your mother in her suit for divorce?

A. I tried to be neutral, as far as I could.

526 Q. Do you remember telling your mother that you would not attend and give testimony in her suit for divorce unless you were summoned?

A. I do.

Q. Please state the substance, if you remember it, of that conversation.

Solicitor for the complainant objects to the question.

A. Well, I tried to make friends as much as I could between father and mother, but found that they were both influenced, father by Brooke and mother by a couple of ladies. I found that I could not make a compromise, and I gave my evidence only when I received a subpœna, and that was one of the causes that induced me to go South.

Q. Do you remember whether or not your oath was taken to the testimony given by you in the divorce suit before you went South or afterwards?

A. Not until I returned.

527 Q. You stated, in your reply to a question of complainant's counsel, that your father and the complainant lived together after 1859, except when they quarreled. What was the cause of the quarrel that occurred between them?

A. Father attempted to manage his own affairs; it was on that account that they quarreled.

Q. How many quarrels did they have from the time that they began to live together in 1859 until the death of your father, if you remember?

A. Quite a number.

Q. Did your mother procure a decree of divorce from your father?

A. Yes, sir.

Q. What was the date of it?

(The solicitor for the defendant, Leonard Mackall, here hands the witness the original decree of divorce of the supreme court of the District of Columbia to refresh his memory.)

A. November 9, 1865.

528 Q. The matter was appealed to the general term and the decree of the general term was what?

A. The decree of the general term was made February 17, 1866, affirming the decree of the lower court.

Q. Were the quarrels that you have reference to after the decree of divorce or before?

A. Both before and after.

Q. Was it before you were made trustee or after that you first learned that your father did not intend to give lot seven (7), square two hundred and twenty-three (223), to the complainant?

A. I have always known it; father told me at the time that I was made trustee that Brooke had control of his property so long that he believed the property was his.

Q. What else did he state?

A. He said that Brooke had been mismanaging his affairs and he intended to take the management of his affairs in his own hands.

Counsel for the complainant desires to have it understood
529 that he objects to all this testimony, but does not wish to repeat the objection to every question.

Q. Do you or do you not mean, in answer to the question of the complainant's counsel upon this subject, to state or to be understood as having said that it was only after you were made trustee that your attention was called to the claim of your brother, the complainant, to this lot?

A. Yes, sir.

Q. Please inspect the interrogatories and answers and the memorandum now handed you and state when and where and under what circumstances they were written.

A. They were written in the latter part of the summer of 1879. During one of the visits of my father to me he directed me to get paper and he read from small slips of paper that he had, and directed me to copy certain questions and he would answer them in writing.

530 Solicitor for the defendant, Leonard Mackall, offers the certain interrogatories and answers and the memorandum, embracing the statements of the late Brooke Mackall, Senior, in evidence, and the same are put in as evidence and accordingly marked as Defendant L. Mackall's Exhibit L. M. No. 2.

Solicitor for the complainant objects to the last offered evidence by the solicitor for the defendant, Leonard Mackall, as incompetent.

Q. Were the interrogatories filed herewith as exhibits in the case written by yourself?

A. Yes, sir.

Q. Are the answers and the memorandum in the handwriting of your father?

A. Yes, sir; he wrote them in the room.

Q. In your presence?

A. Yes, sir.

Q. How many trustees did your father have in his lifetime, and who were they, in order?

A. Brooke, Hill, and myself.

531 Q. Did you or did you not succeed Hill as trustee?

A. I did.

Q. Did your father ever state to you or in your hearing his reasons for displacing the complainant as trustee?

A. He said that Brooke was mismanaging his property; that his private debts were so enormous that he was compelled to put it out of his name. He said that he wished to manage his own affairs, but found that he could not manage them, as they were under Brooke's control.

Q. What children lived with your father after he ceased to live with your mother in 1859?

A. Brooke, Ben, and Barton.

Q. What was the relation between your father and his daughters after the proceedings of divorce by your mother were taken?

A. Very pleasant.

Q. Please state the circumstances connected with the purchase by you for your father of the overcoat which you stated that you
532 gave him at a certain time—what did you give, &c.?

A. I found that father had not an overcoat and I told him if he would have his measure taken I would have one made for him. He had his measure taken and I sent it to Baltimore and my tailor there made him an overcoat; it was sent here to me, having cost forty-eight dollars ($48).

Q. State whether or not you paid for it yourself?

A. I did.

Q. What was the date of this present from you to your father, or about what date?

A. It was some time in November, 1873.

Q. You have said, in reply to question of complainant's counsel, that the complainant and your father lived together most of the time after your wife and yourself left your father's house on Fifteenth street, in this city, because the complainant had insulted your wife. How many quarrels did your father and the
533 complainant have between that time and the time of the death of your father?

A. He had several, but I cannot state how many with accuracy.

Q. How much money did you say you had given your father at different times previous to his death?

A. I have given him three hundred and fifty (350) to four hundred dollars (400).

Q. At what time was it that your father visited you at your room every day, and talked to you about making a will?

A. It was during the summer of 1879.

Q. State what happened between your father and yourself when he handed you the will and what was done with it; state that in full.

A. Father and myself generally met at my room every day, and when we did not meet there we would meet at the Riggs House.
534 On this occasion I was at the Riggs House by appointment, and while staying there I saw father get out of the car and come into where I was, and he handed me this paper and said: "This is my will. I want you to put it into a safe place." He said: "You had better put it into the bank; you had better put it — now." I went over to the bank and put it into the savings bank.

Q. Into what savings bank?

A. The National Safe Deposit Company, on the corner of New York avenue and Fifteenth street.

Q. State, as nearly as you can remember, the year and the month of this occurrence.

A. December 9, 1879.

Q. Explain what you mean when you said that you had, at your

father's request, told Mr. Davenport what should be the terms of that will.

A. Father gave me a slip of paper when I was sitting in the Riggs House, and directed me to take it to Mr. Davenport to write his will. I did so and left it with him and called the next day and got it.

535 Q. Was that paper enclosed in an envelope?

A. It was.

Q. Did you read it before you gave it to Mr. Davenport?

A. I did not.

Solicitor for the defendant, Leonard Mackall, here offers and puts in evidence a certified copy of the will of the late Brooke Mackall, deceased, and the same is accordingly marked Defendant L. Mackall's Exhibit L. M. No. 3.

Q. When did your father say that Brooke and he had not spoken for a year? State what he said as to the cause of his not having spoken to him?

A. He said to me during his sickness that he and Brooke had not spoken for a year, and that it was on account of the money that he had received from appropriations of Congress to pay the balance of the money on lot 7, square 223. He said that he had tried to get some of that money, but he never could; that he had

536 asked Mr. Christy to try to get some of that money.

Q. And it could never be gotten?

A. No, sir.

Q. What was the conversation about your father intending to marry a certain lady and of your father's being in his dotage?

A. Father stated to me during the summer of 1879 that Miss Hunter had told him that she had heard that Brooke was circulating a report about father's going to marry her, and also that Brooke had circulated a report that father was in his dotage.

Q. Was any reference to that conversation made by your father during his last illness, in your presence?

A. No, sir.

Q. Did or did you not leave Bellefont finally in the summer of 1868?

A. I think I did.

Q. Did you not come to Washington and live with your father in 1868?

A. Yes, sir.

537 Q. How long did you live with your father after you left Bellefont?

A. I lived with him about a year; probably longer.

Q. What period of that year, 1869, was it that you went to Baltimore to live?

A. In the spring.

Q. Why did you leave your father's house on Fifteenth street in 1869?

A. It was on account of Brooke's insulting my wife.

Q. Did you or did you not live in Baltimore altogether nine (9) years?

A. I did.

Q. How many years did you first live in Baltimore after leaving your father's house in 1869?

A. About five (5).

Q. What was the relation between your father and yourself during the period of your first residence in Baltimore?

A. Very pleasant. He made me several visits.

Q. Did he correspond with yourself and your wife?

A. He did.

538 Q. Where did you live between the period of your first residence in Baltimore and your second residence there?

A. I lived here.

Q. When you lived in Washington as an employee of the late board of public words how often did your father come to see you? State where he generally saw you and under what circumstances.

A. I saw him nearly every day. The days that I would not go to see him he would come to see me, where I was working on Capitol Hill. Sometimes he would meet me in the morning and I would take him up in the buggy, and then he would walk home sometimes, and sometimes he would come up there and I would bring him home in the buggy.

Q. When did you go next to Baltimore and live?

A. I went there just before the board of public works smashed up, but I remained on the pay-roll until it smashed up. I
539 went to Baltimore and was employed on the Northern Central railroad.

Q. What was the relation between your father and yourself during the second period of your residence in Baltimore?

A. Very pleasant. He came over and paid me three (3) or four (4) visits. He stayed with me one night.

Q. Did you ever at any time carry a letter from your mother to your father in which she requested him to return and live with her?

A. I did.

Q. State about the time or any circumstances connected with it.

A. I judge it was about a year before she died I told her that on account of her daughters I thought it would be best for them to be friends, and after several days of thinking she gave me this note. I did not see it. She gave me the note and I took it to my father. He was living then on C street, the same street that he died —.

Q. On the corner of 4½ street and C street?

540 A. No, sir; the house that Dr. Walsh lives in now.

Q. Will you state what was the cause of the complainant's leaving your father before you were made trustee in 1874?

A. He told me that Brooke had broken into his trunk and broken the door of his room open, and that he did it for the purpose of getting some papers, and also because Brooke did not agree with him in his desire to manage his affairs.

Q. How long did your father live alone after the complainant left him in 1874?

A. I cannot say.

Q. Where did the complainant live after he left his father; do you know?

A. He was living somewhere on Sixth street.

Q. Did he live in comfortable style?

WITNESS: Who?

R. M. NEWTON: The complainant.

A. Yes, sir; he always lived in comfortable style.

Q. Did your father live in much comfort when he lived alone?

541 A. He did not.

Q. Before the separation, in 1874, did the complainant and your father take meals together at the same table and have the same fare? State, if you know, and if you don't know state so.

A. My father did his own cooking in his room; what little he did have to eat he cooked for himself. I have seen that done. The night that I stayed with him he cooked my breakfast; he had oysters. I recollect it very well. He was living at Mrs. O'Bryan's.

Q. Before the separation, in 1874, do you know from what your father told you whether or not the complainant and he took meals at the same table and ate the same fare?

A. They did for awhile.

Q. Did the complainant take meals with your father when he cooked in his own room?

A. Not that I know of.

Q. Do you mean by stating that they did for awhile that
542 they took their meals at a boarding-house together or hotel together?

A. Yes, sir.

Q. For how long a time was that?

A. I do not know. I cannot state what he said; he told me so many things.

Q. Did you pay for your father's meals after the occurrence referred to between the complainant and himself?

A. I used to go up and buy father oysters and bread and things. He afterwards went into next door and took his meals. I gave him a portion of this money that I gave him to pay for them.

Q. When you gave up nursing your father did you do so because the complainant had said that you had given him an overdose?

A. No, sir.

Q. What were the causes of your relinquishing charge of your father as nurse?

A. I had requested him for some time to get a nurse and a nurse was obtained. I then relinquished my charge.

543 Q. Were you an invalid at that time?

A. I was. I was taken sick with the asthma, and I could not attend to him.

Q. How long have you been an invalid, and what is your disease?

A. I have been suffering with asthma for seventeen (17) years. I

suffer with spasmodic asthma, and when these spasms are on me I suffer very much. I have been obliged to go to a hospital for it. I have been under treatment of different physicians in different parts of the country. I had to give up my position in Baltimore on account of my health.

Q. Were you taken with an attack of asthma previous to your giving up charge as nurse of your father?

A. I was. I never had a bed to lay on; I had a lounge. I never took off my clothes. I had to make the fire and such things, which brought on my attack.

544 Q. How long did your father live after the alleged overdose?

A. I suppose about three (3) weeks. As far as the date is concerned, the alleged overdose is on the date that the nurse was obtained, and I suppose from that slip of paper that Brooke handed me that he got it in the same way. It was about a month after the alleged overdose before father died.

Q. You have already seen the decree of divorce in this case of your mother against your father. Did you know at the time of your mother's death, in 1879, that she had been divorced from your father?

A. I never knew it until a couple of weeks ago, when I got hold of those papers. Until then I never knew that they had been divorced.

Q. What was the cause of your not having known that fact until so recently?

A. Mother never said anything to me about it. I never saw the papers.

Q. I want to know whether it was because you took no in-
545 terest as a partisan, or what was the reason?

A. I never did take any interest in it at all.

Q. Who owned house No. 1905 Pennsylvania avenue?

A. Father.

Q. Was that property ever made over by your father to your mother?

A. Yes, sir.

Q. When was it done and what were the circumstances of the transfer?

A. I cannot tell the year.

Q. State about what time.

A. It was during the time we lived in Baltimore. It was in settlement of the family trouble—in lieu of alimony.

Q. Where was your father living when you got back from the South, in 1865?

A. He lived on Twelfth street.

Q. Was or was not the cause of your not knowing very definitely where your father lived during a portion of the time from 1865 to 1873 and '74 due to the fact that you lived, from the sum-
546 mer of 1865 to 1868, at Bellefont, Pennsylvania?

A. Yes, sir.

Q. After leaving Baltimore how long did you say you lived with your father in the house on Fifteenth street?

A. I lived with him for a year.

Q. You went to Baltimore and lived the- first immediately after you left your father's house; did you or did you not?

A. Yes, sir.

Q. During two (2) weeks of your nursing your father were the medicines changed from time to time?

A. Yes, sir; they were.

Q. State how often they were changed.

A. I do not remember how often the doctor changed them; I know they were changed.

Q. Was it your habit to make a memorandum of the hours at which the medicines were to be given him?

A. Yes, sir.

Q. Do you remember when the opiate medicine of which you were accused by the complainant of having given an overdose was given—whether during the first part of your nursing or the latter part?

547 A. It was the last dose that I ever gave him.

Q. Are you certain that the memorandum, a copy of which — introduced by the complainant in this cause, was written in your handwriting?

A. It was, with the exception of the date. I always write the month in full.

Q. Did you put the date upon it—upon that slip?

A. No, sir.

Q. Was this memorandum used by you at the time that you were giving the opiate to your father or before that opiate was used?

A. It was before that opiate was used.

Q. What restoratives were given your father at the time of the alleged overdose?

A. Coffee, and they gave him something to make him vomit, and he vomited.

Q. How much coffee did he drink?

A. He drank about a small teacupfull.

Q. During your visits to your father after the alleged overdose did you ever hear that he had been made worse by the dose

548 that you gave him, which is the alleged overdose?

A. I never did.

Q. During the time that you nursed your father did he ever complain of your clothes being perfumed with the odors of tobacco, and say to you that it was unpleasant to him?

A. He never did. On the contrary, he told me to smoke, as he knew that I was suffering from asthma, and that it is relieved by smoking.

Q. How much money was advanced to aid in the institution of the suit which Mr. Davenport commenced to institute to set aside the alleged deed of February 27, 1880?

A. Well, I gave Davenport as a retainer twenty dollars ($20).

Q. Who advanced that money?

A. Mrs. Christy.

Q. Did you state in your deposition in the divorce suit of your mother against your father that your father had been whipping his wife for seventeen (17) years?

A. No, sir.

Q. Who was the agent who rented the house on Fifteenth
549 street occupied by your father in 1869?

A. Mr. Ulke was the man who owned it; he is the owner of the house.

Q. Did Mr. Ulke tell you that the rent contracted to be paid for that house by the complainant, as agent for your father, had never been paid?

A. He did on one occasion.

Q. Do you think the complainant put the date February 9th on this memorandum made by him an exhibit in this cause to couple it with the opiate treatment?

A. I do; that is in his handwriting.

Q. February 9 was about the date that you quit nursing your father; was it or was it not?

A. I do not remember the time; I know it was the date that the nurse was gotten.

Recross-examination by W. WILLOUGHBY:

Q. Does your suffering with the asthma affect your memory?

A. No, sir.

Q. Have you made any arrangement with any one to give
550 them a proportion of what you may recover if *if* you succeed in recovering in this suit?

Solicitor for the defendant, Leonard Mackall, objects to the question as entirely unprofessional, indecent, and unbecoming a lawyer.

A. No, sir.

Q. Have you retained Gen. Henkle in this case?

Solicitor for the defendant, Leonard Mackall, objects to the question.

A. Yes, sir.

Q. Who has advanced money to retain Gen. Henkle in this case?

Solicitor for the defendant, Leonard Mackall, objects to the question upon the ground that it is a bold attempt to invade the private sanctity of a lawyer in his private relations.

A. I refuse to answer; that is a private matter.

Q. Who advanced money to retain Mr. Newton?

551 A. That is a private matter. I refuse to answer.

Q. Has any advance been made by your sisters or your brothers-in-law for that purpose?

Solicitor for the defendant, Leonard Mackall, objects to the question for obvious reasons, which he says he need not state.

WITNESS: For the purpose of carrying on this suit?

W. WILLOUGHBY: Yes, sir.

A. Yes, sir.
Q. And for the purpose of paying counsel?
A. Yes, sir.
Q. Was the conversation in regard to the making of that will carried on from the summer of 1879 until the winter?
A. No, sir. I do not think he spoke to me but once or twice on that subject. It was only commenced a few days before it was made.
Q. Can you give the items making up that three hundred and fifty dollars ($350)?
552 A. It was in money.
Q. Can't you give the separate items?
A. I don't think I can. I gave him money to pay his room rent and I gave him money to pay the boy to take care of his horse and I gave him money to make a stall in the stable. I gave him money to pay for horse feed, and I gave him twenty dollars ($20) and ten dollars ($10) at a time.
Q. What room rent did you pay?
A. I did not pay for the room; I gave him money to pay for it.
Q. Where was he living then?
A. He was living at Mrs. O'Bryan's.
Q. When did you pay for the overcoat?
A. The bill shows the payments on it.

(Witness here refreshes his recollection by looking at the bill.)

Q. When did you pay it?
A. I do not know, but the furniture was bought in November, 1873.
Q. Has the bill which is in your hand ever been paid by you?
A. There is a balance due on the bill.
Q. How much?
A. There is a balance due of one hundred and sixty-five
553 dollars and one cent ($165.01).
Q. State what the amount of the bill was.
A. Two hundred and forty dollars and one cent ($240.01).
Q. Then you paid seventy-five dollars on that bill?
A. Yes, sir.
Q. That is all?
A. Yes, sir.
Q. That is the only way you paid for the overcoat, is it?
A. Yes, sir.
Q. By making a payment of seventy-five dollars ($75) on that bill?
A. Yes, sir; but the overcoat is not included in the three hundred and fifty (350) to four hundred dollars ($400) which I gave him.
Q. What do you mean by Brooke's insulting your wife?
A. I remember that he quarreled with father, and father went to his bed and my wife went to see him and he quarreled with her for going to father; she had his meals taken to him while he was sick in bed; he was made sick by the quarrel.

554 Mr. NEWTON: What have you advanced as security to the party from whom you purchased the overcoat for your father for the debt which appears of record as a balance due?

A. He holds my note; I have had it renewed a great many times.

Q. State how many times.

A. The notes have always been drawn up for four (4) months, and I have renewed them each and every time.

Q. You have renewed this debt by notes?

A. Yes, sir.

Q. Do you consider this debt as a valid debt among your liabilities?

A. Certainly I do.

Q. Which you expect to pay?

A. Yes, sir.

(Signed) L. MACKALL.

Solicitor for the defendant, Leonard Mackall, here offers and puts in evidence an agreement made between Leonard Mackall, one of the defendants in this cause, and Wesley Willoughby, bearing date the twelfth day of December, 1879, for counsel fees, which will explain itself, and the same is accordingly marked as
555 Defendant L. Mackall's Exhibit L. M. No. 4.

Solicitor for the defendant, Leonard Mackall, also offers and puts in evidence a rough copy of bill, prepared in the handwriting of Col. Christy, referred to in the cause, and the same is accordingly marked as Defendant L. Mackall's Exhibit L. M. No. 5.

Solicitor for defendant, Leonard Mackall, here announces that he has closed the testimony of the witness Mackall, as also his testimony-in-chief, and the same is accordingly closed.

I, Edwin Forrest, an examiner in chancery, do hereby certify that the foregoing deposition was duly taken down by me and reduced to writing from the statements of the witness, at the times and place mentioned in the caption hereof, and was by said witness afterwards read over and subscribed to in my presence and in the presence
556 of such of the counsel as attended; and the said depositions were duly filed with me and are herewith returned, the witnesses having been by me first duly sworn to tell the truth, the whole truth, and nothing but the truth touching the matters at issue in said cause.

I further certify that I am not of counsel for any of the parties to said cause or in any manner interested therein.

(Signed) EDWIN FORREST, *Examiner.*

Postal card addressed: Leon Mackall, Esq., 12th St., bet. H & I N. W., Washington, D. C.

WASH., D. C., *Feb'y* 25, '80.

DEAR SIR: I have had your case fixed for trial on the 30th of March. I am preparing for the trial & would like the deed to you for reference.

Yours truly,

(Signed) W. WILLOUGHBY.

MACKALL
vs.
RICHARDS *et al.* } In Eq. No. 8118.

Filed with the examiner this 30 day of October, 1882, by defendant, Leonard Mackall, as Exhibit L. M. A No. 1.
(Signed) E. FORREST, *Examiner.*

557 COMPLAINANT'S EXHIBIT B. M., Jr., No. 1. Filed with the examiner this second day of November, 1882. Edwin Forrest, examiner.

BROOKE MACKALL, Jr.,
vs.
A. RICHARDS *et al.* } In Eq. No. 8118.

806 12TH ST. N. W., *March 5th*, 1880.

DEAR FATHER: I received your message by Barton & return the articles as you requested, and which I only took from your room at your express desire. I cannot imagine what I have done to have been refused admission to you while you were sick, for I faithfully nursed you for two weeks & should have continued my care and attention had you not permitted, perhaps instructed, the wise Brooke to drive me away. Of his insulting manner to me I will say nothing, but his insults to Kate and Ginne Scott they will never overlook, the latter particularly. I have been compelled to confine my inquiries as to your well-being to your physician & shall still do so, not intending to intrude myself on you unless you should express a wish to see me. I will be obliged if, after you have finished with them, you will return the articles which Kate loaned me for
558 your use, either to her or to myself. I am much pleased to know you are so much better, & hope *will* you will soon be about.

Very truly yours,
(Signed) L. MACKALL.

COMPLAINANT'S EXHIBIT B. M., Jr., X No. 2. Filed with the examiner this 2nd day of November, 1882. Edwin Forest, examiner.

BROOKE MACKALL, Jr.,
vs.
A. RICHARDS *et al.* } In Eq. No. 8118.

WASHINGTON CITY, *January 1st*, 1869.

This is to certify that I, Leonard Mackall, having given testimony in regard to the divorce case between my father and mother derogatory to my father, believing at the time my mother to be actuated by motives far different from which I now know them to be, in the light of mature reflection, do herein express my regret at having done so, believing a neutral position in the unhappy affair would have been the wisest.

I moreover testify that, as far as I am concerned, my father has acted and will, I believe, ever act as a father would act having his children's best interest at heart.

(Signed) L. MACKALL.

559 DEFENDANT L. MACKALL'S EXHIBIT L. M. No. 1. Filed with the examiner this 17 day of November, 1882. (Signed) E. Forrest, examiner.

MACKALL
vs.
MACKALL *et al.* } In Eq. No. 8118.

In Circuit Court of the District of Columbia.

MARTHA MACKALL
vs.
BROOKE MACKALL. } No. —.

Divorce cases.

Examination of witnesses on the part of the petitioner, before William R. Woodward, begun on the 27th day of March, 1862, in the judge's chambers at the court-house, Joseph H. Bradley appearing as counsel for the petitioner, and the defendant, Brooke Mackall, being present and appearing by his counsel, Thomas B. Blount, the testimony being taken by consent of parties, to be used in the trial of the above-entitled cause.

* * * * * * *

TUESDAY, 29*th April*, 1862.

Leonard Mackall; 25 next October; son of the complainant and defendant:

Until this winter for several years past I have been absent from home a great deal. I have observed the manner and conduct of my father towards my mother when I was at home for several years. They were both, manner and conduct, very violent. I
560 have seen him strike her on one or two occasions. He struck her with his hand; this in the presence of the children. I remember on several occasions, sometimes before daybreak in the morning, he come upstairs into my room while I was in bed and would lie on the bed alongside of me and would say he knew he had an awful temper and would do and say things to mother he was sorry for afterwards. He said he would swear that as long as he lived that he would never use a harsh word to her again. That would happen sometimes as often as two (2) or three (3) times in a week. On one occasion, at my uncle's, Benj. Mackall's, at Langley, Virg'a, he slept with me during the night. In the morning we laid in bed together for an hour or two, both awake, and he would say he thought mother was out of her mind and he would make an effort to do everything to please her; that she had always been a good and faithful wife to him; that she was the smartest woman
561 he ever saw; that *that* she dressed *the* as handsomely with as little money as any one else. In the same conversation he

said he had struck her when he was angry, and was always sorry for it afterwards. He said he knew his temper was very violent, and always prayed to the Almighty to change his disposition.

For several years past, on occasions when I was at home, I have known the children to have hardly anything to eat, and have heard him say he hoped to be better off one of these days. I have heard him tell the children he would give them each a cent apiece if they would not drink sugar in their coffee and would abstain from butter.

The supply of fuel has always been very scanty. Sometimes there was fire in the kitchen and sometimes not. During the time he was keeping two horses—sometimes three—and two carriages and a buggy. For a number of years past father and mother have not occupied the same chamber, and there has been no intercourse,
562 by conversation or otherwise. Sometimes they would meet in different portions of the house, and he would tell her of her faults, and that she would regret it some future day. He complained of her not coming to prayers in the morning nor to the breakfast table; that she would read novels till one or two o'clock at night, and sleep too late in the morning. This he said in a rough, tantalizing manner. He would say to her in the presence of the children she was deranged. In reply she said she never would sit at the table with him, because he was always abusing her before her children, and that she would not attend his prayers because she thought they were very sinful; that he was praying at her all the time instead of praying to the Almighty; that he was telling her her faults in his prayers, and saying that she was leading her children to the devil.

One night I was coming from the theatre in company with
563 Dr. Magruder and Col. Irvin, when I got to the house I found mother and some of the children at the windows crying. Mother told me father had locked the front door and said I should not come in, and that they were fastened in their room; that father and Brooke had taken possession of my room. I went to the door to attempt to open it and father put his head out of my room window and asked Dr. Magruder if he took sides with his son. Dr. Magruder replied he did not understand why he had locked me out. Father said I had been going to places where he had told me not to go. The Dr. said he had known me for some time and did not think I would oppose father without a reason. Mother then said she was afraid of her life, and asked the Dr. if he could not get her out of the house. I do not remember his reply. I then said I would go somewhere else. The Dr. invited me to his house, and ma said, "No, you must stay by me." Father was still at the
564 window. Dr. Magruder and Col. Irwin then left. I staid there. Mother asked me if I could not get a ladder to get up to the window. I said I thought not. I then went around to the back of the house and tried to get in the back building. I got on an adjoining shed and found father and Brooke looking out of the window, and I then got down and went round in front of the house again. Mother then threw me two blankets out of the window and I laid down under the front porch. It was a rainy, disagreeable

night; I think in the spring. I went into the house next morning and saw my father there, but have not slept there again till this last winter.

Last December my eldest sister, Lilley, was very ill, and for several days there was no fuel in the house except what my brother Ben. would get around among the neighbors. Father knew this, for I have heard him told of it day after day. The family were all suffering, as the weather was very cold, and it was with difficulty we could get fuel to cook.

565 I have often heard my father tell mother he wished she would leave the house and go to Bellefont to live, for she prejudiced the children against him. She said she would go but for the children.

I have seen a mark of violence on mother's head a year ago last winter, but I do not know how it was made, except by hearsay.

(S'g'd) L. MACKALL.

Leonard Mackall states to me that shortly after the foregoing testimony was reduced to writing he left the city of Washington and hath lately returned to said city, and now appears before me and makes oath according to law that the facts stated therein are true to the best of his knowledge, recollection, and belief. I have very grave doubts as to my authority at this time to take this "jurat," but do so at the request of counsel, submitting the question of authority to the judgment of the court.

September 14, 1865.

(Signed) WM. R. WOODWARD.

566 1. Did you at any time give your son Brooke a deed for this property?

2. How long ago did you appoint your son Brooke agent to attend to this property?

3. When did you commence erecting the building on the corner of this property?

4. How did you expect to pay for this property?

5. W-y did you not put the deed for this property on record?

6. Did you receive those rents, as agreed upon, from the Government?

7. How much rent were you to receive from the Government?

8. Is this property — valuable now as when Richards took it?

1st. I do most solemnly swear that I never at any time gave a deed for this property to my son Brooke.

567 2nd. Soon after I purchased it.

3rd. Just before the end of the war.

4th. Out of the rent of this property, as arranged with Gen'l Canby, Assistant Secretary of War. I directed Brooke to get the materials for erecting this building, to be paid for as above.

5th. There was a family trouble at the time. I did not want the counsel on the other side to know it.

6th. The quartermaster general, in settling the account, disallowed the sum agreed upon to be paid for rent, causing me to stop

the building. I directed Brooke to pay for the materials he had got in city property. They agreed to take it—suddenly changed, and levied on this lot.

7th. General Canby said I should be paid rent for this property, whatever two or three respectable citizens should, on their oaths, say it was worth. Four respectable citizens, on their oaths, said it was worth $1,200 a month.

8th. It would not bring half as much.

DEFENDANT L. MACKALL'S EXHIBIT L. M. No. 2. Filed with the examiner this 17th day of November, 1882. (S'g'd) E. Forrest, examiner.

BROOKE MACKALL, Jr.
vs.
ALFRED RICHARDS *et al.* } In Eq. No. 8118.

568 I do most solemnly swear, before Almighty God, that I never at any time gave a deed to my son Brooke for this valuable property, nor any other paper. It is my property, and mine alone, as the records show. I made Brooke my agent to attend to this and other property of mine, as I was constantly engaged in the Treasury, as accountant, and had no time myself to do so. He, as my agent, was to pay for putting up the house on the corner of this lot out of the rent I was to receive from the War Department, as per agreement with General Canby, who had charge of this business. I was to receive what any two or three respectable men should, on oath, say it was worth. Ten of the most respectable men, on their oaths, said it was worth one thousand dollars per month. General Meigs, the quartermaster general, disallowed it in the settlement of the account, although General Canby promised I should have it.

569 I was thus placed in a terrible dilem-a. I authorized Brooke to pay the claims in city property, which they agreed to take, but suddenly changed and levied on this property arranged between them. M. G. Emory says in his testimony that his claim was paid by Alfred Richards; this was done that he might make this statement for Richards, that he had seen a deed from me to my son, which he knew was not true. Mr. Emory will excuse me. I have never been guilty of a dishonest act in my long life; I should have been had I given a deed for property I did not own. He also says, on oath, that the deed he saw was dated in 1862; again, he swears it was dated before the war. The truth is, this house was only commenced to be erected just before the war ended; the walls *was* not up when General Lee surrendered, which put a stop to its erection. I want no better witness to disprove Emory's statements than Emory himself. Mr. Hyde, agent for Mr. Corcoran, on

570 oath, says I had not paid for this property until the 22nd November, 1865, at which time he gave me the deed; it was a combination between them to rob me of my property and my good name. Richards has already received over twenty thousand dollars rent for this property belonging to me, for which I have sued.

BROOKE MACKALL, Jr., *vs.* ALFRED RICHARDS *et al.* } In Eq. No. 8118.

Defendant L. Mackall's Exhibit L. M. No. 2½. Filed with the examiner this 17 day of November, 1882.

(Signed) E. FORREST, *Examiner.*

571 DEFENDANT L. MACKALL'S EXHIBIT L. M. No. 3. Filed with the examiner this 17 day of November, 1882. (S'g'd) E. Forrest, examiner.

BROOKE MACKALL, Jr., *vs.* ALFRED RICHARDS *et al.* } In Eq. No. 8118.

I, Brooke Mackall, Senior, of the city of Washington, in the District of Columbia, being of sound and disposing mind, memory, and understanding, make, publish, and declare this my last will and testament in manner and form following, viz:

First. That upon my death my body shall be decently buried according to the discretion of my executor hereinafter named, and that the funeral charges and expenses for the same shall be paid out of my estate.

Secondly. I give, devise, and bequeath all my property, real, personal, and mixed, or may be hereafter entitled to, to and unto my children, Leonard Mackall, Benjamin Mackall, Donn Barton Mackall, Kate Christy, and Louise Owens, to them and their heirs, forever, the said property to be divided between the parties above mentioned. My daughters shall each receive a share or portion one-fourth less than the share or portion of any one of my sons named—that is, my daughters' individual shares shall be to
572 my sons' individual shares in the proportion of three to four. The reason I make this discrimination between my said sons and daughters is this: That my said daughters have heretofore received from their mother and from me certain valuable properties which are more valuable than the difference between their shares hereby bequeathed them and that of my sons named.

By this my last will and testament I do not give, devise, or bequeath to my son, Brooke Mackall, Junior, any part, parcel, or portion of my property whatever, as the said Brooke Mackall, Junior, has heretofore received from me many and large advances, and as it would be unjust to my other children hereinbefore named; but I direct Leonard to pay him one dollar.

Thirdly. That upon the death of my son, Leonard Mackall, then and in that event I will and direct that the share or portion bequeathed and devised to him shall become the property of his wife, Rosalie W. Mackall, and her heirs and assigns, forever, and I
573 further will and direct that in the event of the death of either of my sons, Benjamin or Donn Barton, without having disposed of their portions or shares in my estate hereby devised and without leaving wives or children, then and in that event the shares

or portions devised to them shall be equally divided between my other children, who are devisees herein, who may be living at the time of the death of said Benjamin or Donn Barton and the issue of such as may be dead, the issues of such taking *per stirpes* and not *per capita*, and should my son Leonard be dead at the time of the death of either Benjamin or Donn Barton, they or either of them dying without issue or wives living, then the said Leonard's share in their portions shall become the property of Rosalie W. Mackall.

Lastly. Revoking and annulling all wills by me heretofore made, and ratifying and confirming this and none other to be my last will and testament, I hereby constitute and appoint my son,
574 Leonard Mackall, trustee and executor of this my last will and testament, and I hereby give him, my said trustee, full power to sell and convey my property heretofore refer-ed to so as to reduce said property to money before division, if in his discretion it shall appear expedient that the same be sold, and I hereby waive all bond on the part of my executor and trustee.

In testimony whereof I have hereunto set my hand and affixed my seal this the ninth day of December, in the year of our Lord one thousand eight hundred and seventy-nine.

B. MACKALL. [SEAL.[

Signed, sealed, published, and declared by Brooke Mackall, Senior, the above-named testator, as and for his last will and testament in the presence of us, who, at his request, in his presence, and in the presence of each other, have subscribed our names as witnesses thereto.

Dec. 9, 1879.

GRAFTON TYLER.
ARMISTEAD PETER.
LOUIS MACKALL.

575 Before the Register of Wills, Supreme Court of the District of Columbia, Holding a Special Term for Orphans' Court Business.

DISTRICT OF COLUMBIA, *To wit:*

MAY 3D, 1880.

This day appeared Grafton Tyler, Armistead Peter, and Louis Mackall, the subscribing witnesses to the foregoing last will and testament of Brooke Mackall, late of the District of Columbia, deceased, and severally made oath on the Holy Evangels of Almighty God that they did see the testator therein named sign this will; that he published, pronounced, and declared the same to be his last will and testament; that at the time of so doing he was, to the best of their apprehension, of sound and disposing mind and capable of executing a valid deed or contract, and that their names as witnesses to the aforesaid will were signed in the presence and at the request of testator and in the presence of one another.

Test: A. WEBSTER,
Register of Wills.

576 DISTRICT OF COLUMBIA, *To wit:*

I, Hiram J. Ramsdell, register of wills for the District of Columbia, do hereby certify that the foregoing is a true copy of the original will of Brooke Mackall, deceased, and the probate thereto filed and recorded in the office of the register of wills for the District of Columbia aforesaid, and also that the said will, after having been proven by the witnesses whose names appear in the foregoing probate, was, by order of the supreme court of the District of Columbia, holding a special term for orphans' court business, duly admitted to probate and record on the seventh day of May, A. D. one thousand eight hundred and eighty.

In testimony whereof I hereunto subscribe my name and affix the seal of the said supreme court, special term for orphans' court business, this fourteenth day of November, anno Domini 1882.

[SEAL.] (Signed) H. J. RAMSDELL,
Register of Wills for the District of Columbia.

577 DEFENDANT L. MACKALL'S EXHIBIT L. M. No. 4. Filed with the examiner this 17 day of November, 1882. (S'g'd) E. Forrest, examiner.

BROOKE MACKALL, Jr., *vs.* ALFRED RICHARDS *et al.* } In Eq. No. 8118.

This agreement, made this twelfth day of December, 1879, between Leonard Mackall, trustee of Brooke Mackall, of the first part, and Westel Willoughby, of the second part, witnesseth:

That whereas the said W. Willoughby has been for a considerable period acting as counsel in the case of Richards and others *vs.* Brooke Mackall, Senior, and others, No. 2373, in equity, in the supreme court of the District of Columbia, for the defendant in said suit, and he is also counsel for the plaintiff in the case of Leonard Mackall, trustee as aforesaid of Brooke Mackall, against Alfred Richards, in ejectment, No. 19635, at law, in said court:

Now, therefore, in consideration of the services of said Willoughby as such counsel performed and to be performed, he hereby agreeing to conduct the same to a termination to the best of his ability as such counsel, the said party of the first part hereby agrees to
578 allow to him as compensation for such services the sum of $25 in addition to what he has already received by him, and in addition to this as further compensation a sum equal to twenty-five per cent. of such sum as may be adjudged to the said Leonard Mackall, trustee as aforesaid, or said Brooke Mackall, plaintiff in said ejectment suit, by way of *mense* profits, costs, and expenses, and that the said Willoughby shall have a lien therefor upon such judgment as may be recovered against said Alfred Richards, and that the above compensation shall be received by said Willoughby in full satisfaction for his services as counsel in the aforesaid suits and no more.

Witness the following signatures and seals:

(Signed) W. WILLOUGHBY. [SEAL.]
(Signed) L. MACKALL. [SEAL.]

579 Paragraph 7. That during his entire illness the deceased remained in a room in the house where the said defendant likewise boarded and lodged; that the friends of the deceased and his other children were not admitted to the room occupied by the deceased for several days prior to the execution of the pretended deed hereinafter mentioned; that defendant uniformly replied, when the brothers of deceased called to see him, deceased, that although deceased was undoubtedly gradually growing better and was no longer in danger from the disease, yet the excitement of an interview would, in the opinion of defendant and his physician, be injurious to deceased. On one or more occasions shortly before the execution of said pretended deed defendant remarked to the friends and relatives of deceased that he, deceased, was neither in condition to be seen or to execute a will; that for many years prior to his death the deceased had lived with defendant in various lodging and boarding houses in said city of Washington; that deceased, when he withdrew from the other members of his family & began to live with defendant, owned and possessed a very large number of pieces & parcels of real property in the cities of Washington and
580 Georgetown, in the District of Columbia; that considerable portion of it was improved and paying a considerable rental; that all of the rents arising therefrom were collected by the defendant, as the agent of deceased; that defendant during all of these years had no occupation whatever but that of agent for his father, the deceased; that he not only collected, but disbursed, all of these rents, applying all to his own use, excepting so much merely as was required to pay the board & lodging of his father and to cloth- him in a very plain and inexpensive manner; that he in no instance permitted his father to have the use of any money whatever; that said defendant neglected to apply any of the moneys received by him as aforesaid to the payment of taxes or assessments against said real property, but permitted the same to be sold for taxes, and in some instances purchasing property in his own name at the sales thereof for taxes; that defendant, by reason of his very great
581 influence over his father, induced him to assign to defendant a large claim against the Government of the United States for the occupation of the lot of ground at the intersection of New York Ave. & 14th street N. W. during the late war of the rebellion; that defendant received with respect thereto in the first instance $6,000 (go to the Treasury Department and get date of payment and account); that in the year 187- defendant collected on said claim off the Government of the United States the further sum of $—; that defendant, during the time his father lived with — as aforesaid, contracted many and large debts; that those debts were put in judgment and afterwards, by the decision — Supreme Court of the United States, held & decided to be a lien on the said property at the intersection of New York avenue and 14th St.; that said claim still remains a lien un-

paid and unsatisfied; that after the receipt of said second instalment from the Government as aforesaid said defendant retained the same and still retains the greater part thereof unexpended;
582 that he refused and neglected to pay any portion of the sum to his father; that his father was only benefitted to the extent of a suit of clothes purchased by defendant for him; that he neglected and refused to advance one cent thereof, either for street-car fare — to enable his father to make any contributions to the church to which he was devotedly attached, to his father's great aversion; that his father was wholly and designedly kept wholly *in* the mercys of defendant; that the deceased, by reason of loss of teeth and growing infirmities, was suffering in health by not getting proper food suitable; that thereupon he repeatedly — to his friends that the harshness & cruelty of defendant was insupportable, but he could not separate from him because he kept him in this dependent condition; that the influence of defendant was supreme so long as deceased was in his presence; that without any influence whatever, but of his own volition, deceased, then in his usual health, caused a will to be prepared and witnessed by men eminent in the
583 medical profession and life-long friends, so that no question as to his sanity could possibly be made, he having before that time made a will in favor of the said defendant.

That the deed to defendant recites that the consideration was for services rendered & money advanced, when, in fact, the services rendered, if any were rendered, were voluntary on the part of defendant, and repaid by the rents collected an hundred fold; that the money advanced, if any was advanced, was advanced whilst defendant was largely indebted to deceased, and out of moneys derived from the estate of deceased; that defendant had received more than his share of the estate before the making of the said pretended deed.

DEFENDANT L. MACKALL'S EXHIBIT L. M. No. 5. Filed with the examiner this 17th day of November, 1882. (Signed) E. Forrest, examiner.

MACKALL, Jr., *vs.* RICHARDS *et al.* } In Eq. No. 8118.

584 *Order of Court Against Examiner, Lorenzo A. Bailey. Filed January* 3, 1883.

BROOKE MACKALL, Jr., *vs.* A. RICHARDS *et al.* } Equity No. 8118.

This cause coming on this day to be heard upon rule of the court and upon answer thereto filed, make on the 21st ultimo, against Lorenzo A. Bailey, Esqr., examiner, &c., to show cause why he should not reopen the testimony taken before him in rebuttal of the complainant & of Fendall E. Alexander on the 7th ultimo, and being argued by counsel, it is ordered that the evidence filed on the

9th day of December, 1882, be remanded to said Lorenzo A. Bailey, who is directed to take further testimony in the cause as may be desired by the parties.

(Signed) A. B. HAGNER,
Asso. Justice.

585 *Response of Lorenzo A. Bailey, Exam'r in Chancery, to Rule Issued on the 21st Dec.*, 1882. *Filed January* 3, 1883.

In the Supreme Court of the District of Columbia. In Equity.

BROOKE MACKALL, Jr., *vs.* ALFRED RICHARDS *et al.* } No. 8118.

In response to the rule issued December 21, 1882, upon me to show cause why I should not, as examiner, reopen the depositions of Fendall E. Alexander and Brooke Mackall, Jr., taken before me on the 7th day of December, 1882, for the purpose of permitting the counsel for defendant, Leonard Mackall, Mr. R. M. Newton, to cross-examine such witnesses in this cause, I respectfully state—

That I was requested as an examiner of this court, by counsel for the complainant, to take the depositions of said witnesses in
586 rebuttal upon the pending issue between said complainant and the defendants, Alfred Richards and wife. I was informed by said counsel that such testimony would have no relation to any issue between complainant and said Leonard Mackall, and at his request I stated, specially upon the record, that such testimony was taken in rebuttal upon said issue between said B. Mackall, Jr., and A. Richards and wife.

The said Fendall E. Alexander was examined by counsel for complainant and fully cross-examined by W. B. Webb, Esq., counsel for defendants, A. Richards and wife, and so far as they were concerned, as stated by their counsel, the examination was fully closed; whereupon said R. M. Newton claimed the right and asked to cross-examine said witness; whereupon counsel for complainant stated that he alone represented the claim as against Richards, and was the only counsel for complainant in said issue, and was alone reponsible for taking testimony in support
587 of complainant's claim under said issue, and he could not permit any one to interfere with it except the counsel for said Richards and wife, but he had no objection to said counsel for defendant, Leonard Mackall, examining said witness on his own behalf in any proper way. He also stated that he would not nor would his client pay me anything for any further taking of such depositions, and that he would take upon himself the liability of having such testimony striken out if the proposed cross-examination was improperly denied, and asked that said Fendall E. Alexander be permitted to sign the deposition he had made. Having examined the pleadings, and believing that complainant had the right to have such deposition so signed, counsel for defendant, Leonard Mackall, stating that his client would not pay me for taking any further

deposition, and that he would not proceed to examine said witness except by cross-examination, I then permitted said witness
588 Alexander to sign said deposition without any cross-examination by said R. M. Newton.

The witness, Brooke Mackall, Jr., was then examined by counsel for complainant in rebuttal of testimony which had been taken by said W. B. Webb, Esq., upon the isssue between said complainant and Richards and wife, as expressly stated by me upon the record, and was cross-examined by said W. B. Webb, and the deposition was thereupon signed by said witness without any offer or request by said R. M. Newton to cross-examine him.

The depositions being thus closed, I attached to them my return and certificate, and sealed them in an envelope, directed to the clerk of the court, and deposited and filed them in the office of the clerk, according to law, on the 9th day of December, 1882.

These depositions were afterwards published, I believe, at Mr. Newton's request.

Subsequently said R. M. Newton demanded of me that I
589 should reopen the taking of such depositions and allow him to cross-examine both of said witnesses; whereupon I informed him that I did not think that I had any power to do so, if I were willing to do it; that said depositions had been completed and filed and made a part of the record and in the custody of the court, and without an order of the court I would not feel at liberty to do as he requested.

I further informed him that I was perfectly willing to take testimony as an examiner for him or his client, as I would for any one else, upon the usual terms, and I now express such willingness and my desire to do my full duty, as I understand it, in that behalf, or as I may be instructed therein by the court.

The attention of the court is invited to the docket entries in this cause, and more particularly to the fact that counsel for defendant, Leonard Mackall, had and has pending two motions to sup-
590 press the depositions containing the direct examination on which he seeks to cross-examine the witnesses Alexander and Mackall, and to the novel method of procedure sought to be introduced by counsel, who asks for the privilege of cross-examining witnesses and at the same time moves for the suppression of the whole of their depositions.

I deem it proper to add that the language and bearing of Mr. Newton, at the hearing before me on December 7, were not of a character calculated to create in the mind of an examiner an impression of sincerity and good faith on the part of Mr. Newton in his attempt to cross-examine said witness Alexander.

Having answered fully, I respectfully submit that the rule should be discharged.

(Signed) LORENZO A. BAILEY,
Exam'r in Chancery.

DISTRICT OF COLUMBIA, } ss:
County of Washington, }

591 Before me personally appeared Lorenzo A. Bailey, who, being first duly sworn, says: I have read the foregoing answer by me subscribed to the rule issued against me on the 21st day of December, 1882, and know the contents thereof, and the facts therein stated of my personal knowledge I know to be true, and those stated upon information and belief I believe to be true.

(Signed) LORENZO A. BAILEY.

Sworn to and subscribed before me this 3rd day of January, A. D. 1883.

(Signed) R. J. MEIGS, *Clerk*,
By M. A. CLANCEY,
Ass't Clerk.

592 *Cross-Examination by Counsel for Defendant, Leonard Mackall, of Witnesses in Rebuttal. Filed January* 12, 1883.

In the Supreme Court of the District of Columbia. In Equity.

BROOKE MACKALL, Jr., }
vs. } No. 8118.
ALFRED RICHARDS *et al.* }

Testimony taken January 11, 1883, in pursuance of the order of the court passed herein Jan'y 3, 1883, being the cross-examination by counsel for defendant, Leonard Mackall, of witnesses examined in rebuttal on behalf of complainant on the 7th day of December, 1882.

Witnesses.	Cross-exam.
Alexander, Fendall E.	pp. 11–30
Mackall, Brooke	pp. 31–44

593 In the Supreme Court of the District of Columbia. In Equity.

BROOKE MACKALL, Jr., }
vs. } No. 8118.
ALFRED RICHARDS *et al.* }

Be it remembered that at an examination of witnesses begun and held on the 7th day of December, A. D. 1882, when certain depositions were taken on behalf of the complainant in a certain cause then depending in the supreme court of the District of Columbia, wherein Brooke Mackall, Junior, is complainant and Alfred Richards and others are defendants, I, Lorenzo A. Bailey, an examiner in chancery in and for said District of Columbia, did cause to be personally present at my office, number 456 Louisiana avenue, in the city of Washington and in the District aforesaid, Fendall E. Alexander and Brooke Mackall, Junior, to testify on the part and in behalf of said complainant on the issue between said com-
594 plainant and said defendant, A. Richards, in rebuttal, and that at an examination of witnesses begun and held (in pur-

suance of an order of the said court passed in said cause on the 3rd day of January, A. D. 1883) on the 6th day of January, A. D. 1883, and continued until the 11th day of January, A. D. 1883, when the within depositions were taken, before me, Lorenzo A. Bailey, an examiner in chancery, personally appeared, at my office aforesaid, in the city and District aforesaid, the said Fendall E. Alexander and the said Brooke Mackall, Junior, in obedience to subpœnas issued by the clerk of said court and to them, respectively, directed, commanding them to appear before me on the date last above mentioned as witnesses for the complainant in said cause.

(Signed) LORENZO A. BAILEY,
Examiner in Chancery.

595 In the Supreme Court of the District of Columbia. In Equity.

B. MACKALL, Jr., *v.* A. RICHARDS *et al.* } No. 8118.

Notice is hereby given this 4th day of January, A. D. 1883, that on Saturday, the 6th inst., at 11 o'clock a. m., at my office, No. 456 La. Ave., I will proceed to execute the order of the court of the 3rd inst. in this cause.

(Signed) LORENZO A. BAILEY,
Exam'r in Chancery.

Service of copies of the foregoing acknowledged this 4th day of January, 1883.

W. WILLOUGHBY,
Counsel for Comp't, B. Mackall, Jr.
W. B. WEBB,
Counsel for Def't-, Richards et ux.
ROBERT M. NEWTON,
Of Counsel for Def't, L. Mackall.

596 In the Supreme Court of the District of Columbia. In Equity.

BROOKE MACKALL, Jr., *v.* ALFRED RICHARDS *et al.* } No. 8118.

Met this 6th day of January, A. D. 1883, at 11 o'clock a. m., in compliance with the order of the court passed in the above-entitled cause on the 3rd day of January, A. D. 1883, and in pursuance of notice by the examiner to counsel, which notice is hereto annexed at page 1.

Present: W. Willoughby, Esq., counsel for complainant.

Counsel for complainant states that he has no testimony to offer; and he further states that the testimony, as he understands, in this case has been closed on all sides by agreement and stipulation, and

he intends to move the court to rescind the order passed herein
597 on January 3rd, 1883, and has served notice of motion therefor; and counsel for complainant further notifies the examiner that his client declines to pay the expenses of taking any further testimony.

R. M. Newton, Esq., of counsel for defendant, Leonard Mackall, here appears, and the foregoing is read to him by the examiner.

The examiner calls Mr. Newton's attention to the notice given by counsel for complainant as to the payment of the expenses for taking any further testimony, and asks Mr. Newton whether he will pay such expenses.

Mr. NEWTON: I will not, most assuredly.

The order of the court of January 3d, 1883, is here read to counsel by the examiner.

At half past eleven o'clock a. m., Mr. Webb being absent and not heard from, and respective counsel present for the other parties to said cause declining to pay the expenses for taking any further tes-
mony, and counsel for complainant having notified the ex-
598 aminer that the testimony is closed as to his client, and no witness having been offered for examination, the examiner respectfully submits the question to the court whether he shall be required to take any further testimony, and respectfully requests that he be relieved of the duty in taking any further testimony in this cause, and the hearing is thereupon adjourned by the examiner, subject to the further order of the court.

(Signed) LORENZO A. BAILEY,
Examiner in Chancery.

Envelope with Endorsement. Filed January 6, 1883.

BROOKE MACKALL, Jr.,
v.
A. RICHARDS *et al.* } In Equity. No. 8118.

Record of proceedings before the examiner on Jan'y 6, 1883, in compliance with the order of court dated Jan'y 3, 1883, with questions certified by the examiner to the court.

Fee, $5.00; not paid.

Clerk will please file.

L. A. BAILEY, *Exam'r.*

599 In the Supreme Court of the District of Columbia.

B. MACKALL, Jr.,
vs.
A. RICHARDS *et al.* } No. 8118. Equity Doc. 22.

The examiner, having withdrawn by leave of court the questions certified by him to the court on the 6th inst., gives notice this 9th day of January, A. D. 1883, that, in pursuance of the order passed in this cause on the 3d inst., he shall proceed, at 11 o'clock a. m. on

Thursday, the 11th inst., at his office, No. 456 Louisiana avenue, to take such further testimony as may be desired by the parties. You will please cause the witnesses whom you desire to examine to attend at the time and place above designated.

(Signed) LORENZO A. BAILEY,
Examiner in Chancery.

Service acknowledged this 9th day of January, 1883.

(S'g'd) W. WILLOUGHBY,
Sol. for Comp't.

600 (S'g'd) W. B. WEBB,
Solicitor of Defendants, Richards & Wife.

Service acknowledged this 9th day of Jan., 1883, with the right reserved by me, at any time prior to day last stated, to bring by motion before the c't the acts of said examiner as embraced in the record referred to as having been certified by him to the court.

(S'g'd) ROBERT M. NEWTON,
Solicitor of Deft, L. Mackall.

In the Supreme Court of the District of Columbia. In Equity.

B. MACKALL, JR., *v.* A. RICHARDS *et al.* } No. 8118.

Met at the office of the examiner, No. 456 Louisiana avenue, Washington city, in the District of Columbia, this 11th day of January, A. D. 1883, at 11 o'clock a. m., in pursuance of notice
601 hereto attached at page 9.

Present: W. Willoughby, Esq., counsel for complainant; R. M. Newton, Esq., of counsel for defendant, Leonard Mackall.

Fendall E. Alexander, a witness sworn and examined on behalf of the complainant in rebuttal on the issue between the complainant and the defendant, A. Richards, in this cause on the 7th day of December, 1882, appears before the examiner in obedience to a subpœna commanding him to appear this day before the examiner as a witness for the complainant.

A copy of said subpœna is handed by the witness to the examiner and the same is hereto attached at page 12.

Mr. Newton proceeds to cross-examine said witness on behalf of the defendant, Leonard Mackall.

602 Supreme Court of the District of Columbia, the — day of ——, 188–.

MACKALL, Jr., *vs.* RICHARDS. } No. 8118. Docket —.

The President of the United States to F. E. Alexander:

You are hereby commanded to appear as witness for the comp. before L. Bailey, examiner, 456 La. Ave. (forthwith), on the 11 day of Jan., 1883, at 11 o'clock a m. (and bring with you —).

Witness D. K. Cartter, chief justice, &c.

R. J. MEIGS, *Clerk, &c.*

Counsel for complainant states, on behalf of his client, that this subpœna was procured by some one without the authority of complainant, and he disclaims it entirely.

Counsel for defendant, Leonard Mackall, states that he had issued or caused to be issued the subpœna to Mr. Alexander, and also had issued or caused to be issued a subpœna to Brooke
603 Mackall, Jr., in pursuance of notice from the examiner served upon him and in accordance with the desire upon his, Mr. Newton's, part to have no further delay in cross-examining the witnesses who deposed on the 7th day of December, 1882.

In having had these subpœnas issued he simply waived, for the purpose stated, his right to have the witnesses appear in pursuance of their original summons, whatever they may have been.

Mr. Willoughby, counsel for complainant, disclaims the issuing of both subpœnas, and objects to Mr. Alexander's testifying without being sworn on behalf of the defendant, Leonard Mackall.

Mr. Newton objects to having the witness resworn, on the ground that the examination he is about to make is cross-examination.

FENDALL E. ALEXANDER cross-examined by Mr. NEWTON:

Q. Mr. Alexander, were you an attorney in practice in 1873
604 and at the time of the tender made by Brooke Mackall, Senior, to Alfred Richards, one of the defendants herein?

A. I was admitted to the bar in May 1871 or 1872. I don't recollect exactly, but think it was 1871. I did not enter upon the practice of law until about a year after my admission. In 1873, I think, I had just entered upon the practice.

Q. Were you authorized or employed to witness the tender and to act in connection with the same in your professional capacity?

A. If the question has reference to my witnessing the tender my answer is that I was simply requested to act as a witness without any suggestion from the Messrs. Mackalls and without any intention on my part to act in a professional capacity.

Q. In which capacity did you act in examining the short copy of the judgment of Richards against Brooke Mackall, Jr., and also in performing other acts to which you deposed as having been performed by you on that occasion?

605 A. Simply as a witness and as a friend.

Q. By whom were you requested to act in the premises?

A. I think by Mr. Mackall, Senior.

Q. Are you absolutely certain that you were requested originally by Mr. Mackall, Senior?

A. About as much so as a man can be after the lapse of nearly ten years.

Q. How old were you at that time?

A. I was born on the 24th of September, 1850, and the tender occurred on or about the 8th of August, 1873, which would make me at the latter date about twenty-three years of age.

Q. In the remark made to which you have deposed as having heard made by Mr. Brooke Mackall, Senior, to wit (addressed to Mr. Richards), "I have come by the instructions of my attorney to tender you the amount I owe you under your judgment, as appears by the statement of the clerk of the court *of the amount*," whom did Mr. Mackall, Senior, mean as his attorney?

A. If the question has reference to what passed in Mr.
606 Mackall's mind at the time he made the remark my answer is, I do not know.

Q. Did he not mean yourself?

A. That would be impossible; I was not his attorney, and never had been.

Q. Who was Mr. Mackall Senior's attorney at that time?

A. I do not absolutely know, but from the fact of our driving to Mr. Hine's office it might have been he.

Q. Did Mr. Brooke Mackall, Senior, have any attorney of record in the cases at law which had resulted in the executions in the sale and in the conveyance of a part of lot 7 to Alfred Richards?

A. I know absolutely nothing at all about his attorneys.

Q. Will you examine Exhibit No. 6 filed with the bill in this cause and answer the question as to who was his attorney of record in the case of Alfred Richards and Thomas A. Richards, concerning which you deposed on the direct examination in rebuttal?

A. The exhibit handed me appears to have reference to Brooke Mackall, Junior.

607 Q. Did you not state, in answer to a question by Mr. Webb on cross-examination, that the defendant in that case was Brooke Mackall, Senior?

A. My testimony in reference to looking at the judgment and docket entries and papers in the suit at law was for the purpose of ascertaining whether or not there was a credit on the judgment or an order for a credit, and that the judgment proceedings that I looked at were in a suit against Brooke Mackall, Senior; at least that is my recollection.

Q. Please examine Exhibits Nos. 4 and 5 and state if the merits of those two cases of George H. Plant, as plaintiff, and Matthew G. Emory, as plaintiff, respectively, did not constitute a part of the matter that you had in your mind as friend and as witness summoned by Mr. Brooke Mackall, Senior, in connection with the matter of the tender of the last-named party to Alfred Richards.

608 I allude to the parts of the exhibits represented in the declarations.

A. The exhibits handed me appear to me to be copies of declarations, executions and returns thereon, and accounts in certain suits at law againt Brooke Mackall, Junior. These suits set forth in the exhibits mentioned could not have been and were not copies of the papers that I looked at on the 8th of August, 1873, for the reason that I was guided entirely by the short copy made by Mr. McNamee for me, clerk of the court, in the suit of A. and T. A. Richards against Brooke Mackall, Senior, I think.

Q. At the time, during the period of the whole time, embraced in

the transaction connected with the tender had you not had knowledge of the title held by Alfred Richards which constituted the basis of the whole transaction of the tender?

A. I don't know what the question means by the title. Of course, if the question means the title to the judgment, I had knowledge that A. and T. A. Richards had title to a judgment against
609 Brooke Mackall, Senior, from the short copy.

Q. Did you not know at the time that Alfred Richards had a deed to that lot or a portion to lot 7, in square 223, on the corner of 14th street and New York avenue?

A. No.

Q. What was the amount which Mr. Brooke Mackall, Senior, stated was made out by the clerk as the amount due Richards?

A. Mr. Brooke Mackall, Senior, did not state to Mr. Richards that the clerk of the court had said there was such a sum due, but the short copy showed the amount tendered.

Q. Did you not state that Mr. Mackall, Senior, said to Mr. Richards, "according to the statement of the clerk of the court I owed you the full amount, which I tendered you?"

A. Yes; the statement had reference to the short copy—not a verbal statement by the clerk.

Q. What was the amount Mr. Brooke Mackall, Senior, tendered?

A. Thirteen hundred and sixty-two dollars.

610 Q. Do you mean to state now that during all this interview nothing was said to you or in your presence of a deed executed by the marshal of the District of Columbia, Alexander Sharp, to Alfred Richards of this property, the property in question, on the 7th day of October, 1870?

A. There was nothing said of any deed at all.

Q. Had you any knowledge as a matter public record or notoriety of said deed?

A. Such a deed may have been on record, but I know nothing of it and did know nothing of it.

Q. Please axamine Exhibit No. 8 filed with the bill in this cause and read such portions of the exhibit as may refresh your memory upon that question.

A. I have read portions of the exhibit mentioned, which purports to be a copy of a deed from Alexander Sharp, marshal of the District of Columbia, to Alfred Richards, made in pursuance of a sale under certain executions issued against Brooke Mackall, Junior.
611 I have never seen the said exhibit before, and have no recollection of ever seeing the original of which it purports to be a copy.

Q. How long had you known Brooke Mackall, Junior, at the time of this tender?

A. It is impossible for me to tell exactly, but I have known him from my boyhood up.

Q. What were your relations with him at the time of the tender and previous to that time for an extended period?

A. My relations with him have always been pleasant.

Q. In whose interest did you consider that you appeared as a

witness to this tender—Brooke Mackall, Senior, or that of Brooke Mackall, Junior?

A. I had no thought about whose personal interest I was a witness for. I was simply a witness to the truth and the facts.

612 Q. Whom did you consider as vested with legal title to the property concerning which, to wit, the property corner of 14th street and New York avenue, lot 7, this tender was made by Brooke Mackall, Senior?

A. I knew nothing of the title to that property. Never having examined it, I could therefore have no opinion about it.

Q. Did you not have some thought, some idea, negative or positive, remote or as a result of immediate and practical reflection, as to who owned that property?

A. No, sir; I know nothing about it.

Q. Do you mean to say that as a lawyer and a man of thought and reflection your then knowledge and acquaintance with Brooke Mackall, Senior, and Brooke Mackall, Junior, that you had no thought, no idea, and no conception as to any ownership of this property?

A. The question last propounded to me is one involving a matter of opinion as an attorney, and my answer is that I can never pass

613 upon the question of the ownership of property without an examination. I never examined the title, knew nothing about it, either from the land records or any conversations about it. I recollect upon one occasion that Mr. Brooke Mackall, Junior, stated to me that in some suit or another Mr. Matthew G. Emory had sworn that he had seen some deed to that property on 14th St. and New York avenue, where that market is, which statement Mr. Brooke Mackall, Junior, said was a damned lie.

Q. Then I would ask you if, from your knowledge of the earnest manner indicated by Mr. Brooke Mackall, Senior, in connection with the tender during his ride from Mr. Richards' residence, as illustrated in the fact of his counting the money and having you to witness that the money consisted of legal-tender notes, of the fact that in your presence he persistently offered the amount, as he considered it, of the judgment of Richards, declining Mr. Richards'

614 proffer to take less than that amount, did not impress you with the earnest asseveration by Mr. Brooke Mackall, Senior, that he was the then owner of that property as between himself and the complainant, Brooke Mackall, Junior.

A. I had no thought about the matter. The question of who was the owner of the property or what was the object of the tender never entered my head at all.

Q. Did you know, in your professional capacity or otherwise, that at the time of the tender the legal title to lot 7, square 223, as between Brooke Mackall, Senior, and all others than the defendant, Alfred Richards, was in Joseph Hill, trustee?

A. I knew nothing about the title and know nothing about the title, and want to know nothing about it, unless I am paid the fee for examining it.

Mr. Newton gives notice that he will present to the examiner, to be filed as evidence of the legal title and of the equitable title at that time existing to the property in question, a certified copy
615 of a deed of trust from Brooke Mackall, Senior, to Joseph Hill, trustee.

Q. Who wrote the memorandum which you state you signed upon the occasion of this tender?

A. I think Mr. Mackall, Senior.

Q. Did you not testify, aided in respect to your memory of what occurred on this occasion, by this memorandum?

A. Yes; as a means of refreshing my memory of a transaction which occurred nearly ten years before.

Q. Who handed you that memorandum in your character as a witness in this cause?

A. Mr. Brooke Mackall, Junior, or his counsel; I don't know which; I think his counsel did.

Q. Were you present when that memorandum or paper or agreement or instrument in writing was written?

A. I think not.

Q. You signed it, did you not?

A. (Witness examines the paper referred to.) Yes.

616 Mr. Newton asks counsel for the complainant if he will produce for his benefit the paper in question.

The paper is produced and handed to Mr. Newton, who examines the same.

Q. What was said to you by Brooke Mackall, Senior, in connection with this memorandum?

A. It was understood that he would write it out and we would sign it if it agreed with our recollections of the transactions.

Q. Who were present when this was written?

A. I do not know. I was not present. That is my recollection now.

Q. What was your idea or impression produced by the proffer of Mr. Richards represented in his remark, to wit, "Yes, sir; you owe me a balance of eight hundred dollars," and, further, by his remark, "I will not receive the whole amount of the judgment, but only the part I claim?"

A. I do not know what Mr. Richards' impression was nor
617 do I know what my impression was at that time; but, judging from natural reason at the present time, the remark of Mr. Richards, as compared with the tender by Mr. Mackall, Senior, to him, my idea is that there was some controversy in regard to the amount, but that is a mere opinion deduced from the circumstances.

Q. What was the cause of your going to examine the judgment? Did you not suppose that a part of this judgment, all but eight hundred dollars, had been paid?

A. That is the presumption deduced from our going over there and the circumstances of the controversy as to what was the amount, and I presume that was the cause, an ascertaining whether there

was a credit on the judgment or an order for a credit filed among the papers.

Q. Was it not your impression that the object of Brooke Mackall, Senior, in explicitly tendering the entire amount of the judgment, as he considered that amount to be, to exhaust his efforts on that occasion to save this property to himself?

618 A. I at that time knew nothing about the property, and I know nothing about it now, with the exceptions I have stated. Mr. Mackall seemed to have several objects in making the tender, and my impression at that time might have been that Mr. Mackall, Senior, in making the tender, was desirous of paying what he considered as an honest debt or getting rid of the annoyance of a judgment based upon a dishonest claim, or of saving himself from paying interest further upon the judgment.

Q. Was the judgment in question based upon a note of a negotiable character or otherwise?

A. It was based upon a note, I think; that is my recollection. Whether it was negotiable or not I do not recollect; that was a matter of opinion. Anyhow, the note was merged in the judgment.

Q. Did you not see the note?

A. I think I did.

Q. By the answer that the note was merged in the judg-

619 ment am I to understand that the judgment embraced and concluded other debts than the note, or was the judgment not purely the result of the note with costs and interest added?

A. My recollection is that it was a suit on a note.

Q. Who was the maker of the note?

A. I do not recollect distinctly who the maker of the note was—whether Brooke Mackall, Senior, or Brooke Mackall, Junior—or who was endorser. My impression is that the maker was Brooke Mackall, Senior, as I have previously stated that my object in looking at the judgment and the papers was to find whether there was a credit or an order for a credit. I paid only such attention as an attorney would in casually looking over papers which had resulted in a judgment.

Q. Was not the note made by Brooke Mackall, Junior.

A. It may have been. Counsel must understand that I am testifying to matters which occurred nearly ten years ago, and cannot state things with that positiveness which a witness to recent

620 transactions could do.

Q. Was not this note endorsed?

A. I think it was.

Q. By whom?

A. My present recollection is that it was either made by Brooke Mackall, Senior, and endorsed by Brooke Mackall, Junior, or *vice versa;* I cannot state positively which.

Q. I hand you the declaration in the case of Richards against Brooke Mackall, Junior, and ask you to refresh your memory as to the parties to the note.

A. I do not think that I ever saw the purported declaration before to-day. If I had the short copy prepared by Mr. McNamee I

think I could satisfy counsel that the papers that I looked at were the papers in a suit against Brooke Mackall. The paper handed me does not refresh my memory as to the endorsers and maker of the note.

Q. Which Brooke Mackall do you mean by referring to the short copy?

A. I mean Brooke Mackall, Senior; but the short copy did
621 not distinguish whether it was the senior or junior, as I recollect. But the papers I looked at did not show any credit on the judgment, or any order for a credit.

Q. (Counsel calling witness' attention to the copy of a declaration filed as Exhibit No. 6 to the bill in this cause.) Does not this exhibit indicate that in your testimony previously given in this cause in rebuttal the defendant to the judgment of Richards was Brooke Mackall, Senior?

A. The exhibit handed to me is a declaration to which Brooke Mackall, Junior, is defendant. My recollection is pretty positive that it was not that suit.

Q. Do I understand, then, that, from the best of your knowledge, the tender made by Brooke Mackall, Senior, was a tender made in his own original right as the owner of the lot 7, and with a view to save the same to himself?

A. I do not know anything about the lot. He made the tender accompanied by the remarks which I have previously recited,
622 and Mr. Brooke Mackall, Junior, and myself were the witnesses of the fact. He may have made the tender for the object stated in the question.

Q. Did not this tender have reference to executions levied upon lot 7 in pursuance of the judgments of Plant and Emory and the proceedings in which suits are made, Exhibits Nos. 4 and 5 to the bill in this cause?

A. The tender was made in reference to the judgment exhibited in the short copy made by the clerk of the court, and to which I have already testified. That short copy did not have the names mentioned by the counsel.

Q. Referring again to the deed of the marshal of the District to Richards, are you certain that nothing was said in regard to that deed during the whole of this interview?

A. About as certain as a man possibly could be after the lapse of about ten years.

Q. How long before you were summoned as a witness in this case and before you testified had you given your attention to the
623 subject of the tender in 1873?

A. After I signed the memorandum I never saw it again until about two days before I testified in this case.

Q. Have you never learned, in connection with this tender, either prior to the day on which it was made or since, that Alfred Richards holds title only to lot 7 by having purchased the judgments which had been levied in the form of executions upon the Palace Market building in pursuance of the mechanics' lien statute?

A. I have no information in reference to Alfred Richards' title to the lot referred to except that derived from the deed of the marshal of this District to Richards, an alleged copy of which counsel himself handed me.

Q. Did you hear no remark from Mr. Mackall, before the tender or after or during, stating the terrible dilemma in which he had been placed by the levy of executions of Emory and Plant under the mechanics' lien upon the said——

624 A. No. Neither of the Messrs. Mackalls ever discussed their private affairs with me, excepting only the remark made to me by Mr. Brooke Mackall, Junior, in regard to Mr. Emory's saying he had seen a deed.

Mr. Newton announces his cross-examination of the witness as closed.

Mr. Willoughby does not desire to examine the witness, and by direction of counsel present the deposition of the witness is here closed.

(S'g'd) F. E. ALEXANDER.

Taken and subscribed before me this 11th day of January, A. D. 1883, the witness having been by me, on the 7th day of December, A. D. 1882, as above stated, first duly sworn in this cause.

(S'g'd) LORENZO A. BAILEY,
Examiner in Chancery.

625 Brooke Mackall, Junior, the complainant, sworn and examined on his own behalf in rebuttal in the issue between him and the defendant, A. Richards, in this cause on the 7th day of December, 1882, appears before the examiner in obedience to a subpœna commanding him to appear this day before the examiner as a witness for the complainant. A copy of said subpœna is handed by said witness to the examiner and the same is hereto attached at this page.

Supreme Court of the District of Columbia, the — day of ——, 188–.

MACALL, Jr., *vs.* RICHARDS. } No. 8118. Docket —.

The President of the United States to Brooke Mackall:

You are hereby commanded to appear as witness for the comp. before L. Bailey, ex'm., 456 La. Ave. (forthwith), on the 11 day of January, 1883, at 11 o'clock a. m. (and bring with you —).

Witness D. K. Cartter, chief justice, &c.

R. J. MEIGS, *Clerk, &c.*

626 Mr. Newton proceeds to cross-examine said witness on behalf of the defendant, Leonard Mackall.

Counsel for complainant states that this subpœna was pro-ured by some one without the authority of complainant, and he disclaims it entirely and objects to any further examination of the witness on

the ground that he had been twice examined in this case fully and cross-examined all that was desired by any counsel in the case, and his testimony in rebuttal was closed without any offer on the part of counsel for Leonard Mackall to cross-examine him; he further objects to his testifying without being resworn in the cause.

Mr. Newton refers to his statement in reference to this witness immediately preceding the cross-examination by him of Mr. Alexander.

627 Counsel for complainant further gives notice that he will require the expenses of the taking of depositions under this order of the 3d inst. to be paid by defendant, Leonard Mackall, or his counsel, according to the rule No. 64 of this court, before they can be read on the hearing of the cause, and will make such motion to the court at the proper time, and specially objects to counsel for Leonard Mackall examining the witness in relation to the testimony offered as rebuttal on the ground that it relates solely to the issue between the complainant and Alfred Richards and has no relation to any issue or alleged issue between complainant and said defendant, Leonard Mackall, and that counsel for defendant, Leonard Mackall, has no authority to represent either of the parties to the issue between complainant and said defendant Richards.

628 Mr. Newton states that in the few questions he may ask the complainant in this cause he shall address himself to the issue between the complainant and the defendant, Leonard Mackall, as limited to the matter adduced by the complainant in rebuttal, and declines to have the witness resworn on the ground that the examination he is about to make is cross-examination.

BROOKE MACKALL, Junior, cross-examined by Mr. NEWTON:

Q. Did you ever see Mr. Matthew G. Emory, now president of the Second National Bank of this city, at any time previous to your completion or partial completion of the Palace Market building, on lot 7.

A. Yes, sir.

Q. Did you not visit him frequently about the time of the commencement of the erection of the Palace Market building?

A. I saw — two or three times; possibly more.

Q. Did you apply to him for credit in connection with the material for that building as agent for your father, or not?

629 A. I did not.

Q. In what capacity did you apply to him for credit?

A. On my own account.

Q. Did you consider that you had the right to apply for credit on your own account unless you were agent for your father or unless you held a deed from your father for that property?

A. I did.

Q. Did your father not, at that time, have all the title that he could have gotten by direct conveyance from W. W. Corcoran and by decree of the equity court to lot 7, square 223?

A. My father at that time had a decree in his favor for an un-

divided portion of this property, which had never been executed. He did not at that time have a deed from Mr. Corcoran.

Q. Did you not swear to the bill in this cause?

A. I did.

630 Q. Did you not mean what you said, under the sanctity of that oath, when you state in the second paragraph, substantially, that your father in 1851 purchased and paid for lot number 7 of W. W. Corcoran and others?

A. I meant all that I stated in my bill.

Q. Then you mean to say that you, in applying to Mr. Emory for credit, occupied the position of agent for your father?

A. I do not; my father in 1859 gave me this property and put me in possession of it, and I considered the property mine from the moment he gave it to me. At the time he gave it to me he told me at some future time he would make me a deed for the property; that he did not have a deed for the property at that time, and could not give me one.

Q. Did your father authorize you to build the Palace Market?

A. No; I built it of my own account; bought the materials in my own name; had the work done by the day and paid for it, and father had nothing to do with it.

631 Q. Did you pay Mr. Emory for what he states you contracted to get from him?

A. I did not, because the Government had stopped the building from being finished, and that was the reason I was not enabled to pay Mr. Emory as I promised.

Q. Had you expected to pay Mr. Emory from the rents of the Palace Market?

A. I relied in part on the rents from the building when it should be completed to pay Mr. Richards and others for materials I had purchased.

Q. Did the Government ever pay you rent for the use and occupation of lot 7 during the late war?

A. The Government did pay me rent for the use and occupation of this lot which they occupied during the war, and I so stated before when I was cross-examined by you in this case.

Q. How much was that?

A. To the best of my recollection, between eight and nine thousand dollars in all.

632 Q. Do you mean to state, in reply to your counsel's question asked upon the direct, in rebuttal, that you never showed any paper or deed whatever to Mr. Emory in order to get credit for the material for building the Palace Market?

A. I say now, what I have said before, that I never showed a deed for lot 7, square 223, to Mr. Emory, as I had no such deed. I have no recollection of ever showing a deed for any property to Mr. Emory, but if I did it must have been the deed for some lots in the first ward, as it was the only deed that I had at that time.

Q. You are sure, are you not, that the material which you wanted from Mr. Emory was to build upon lot 7, square 223?

A. I bought the stone from Mr. Emory for what is now known as the Palace Market—that is, all the brown stone used in the building.

Q. You are certain that you had a deed at the time to lot 7, square 17, are you not—at the time of the interview between Mr. Emory and yourself in regard to getting the material?

633 A. I do not recollect the exact date of the deed for the first ward lots; the deed will speak for itself.

Q. Did you not say on your direct — that the date of the deed was December 21, 1863, and acknowledged January 9, 1864, and recorded November 2, 1865?

A. The statement I made then was correct, as I had the deed then before me.

Q. When was the Palace Market begun?

A. I forget now the exact date.

Q. Did you not state in your deposition previously given in this cause that it was begun during the latter part of the late war—about or during 1864.

A. My statement made at the time referred to is correct.

Q. Is it not a habit of yours to correct or attempt to correct your testimony after it is sworn to and subscribed.

A. I do not understand what you mean by such an impertinent question. My testimony is truthful and thoroughly consistent.

Q. Did you not testify in the divorce suit of your mother

634 that your father had made a deed to you for lot 7, and afterwards made a statement to the effect that at that time you were very young, that you had been a long time on the witness stand, and that you discovered that you had not had the deed from your father for lot 7?

A. The question put by you is a garbled and unfair statement and one of your tricks to put me in a false position. I now ask you to hand me my testimony in order that I may state exactly what I did state and prevent being put in a false position, or in a seemingly false position. My recollection of my testimony in the divorce suit is that in answer to the question whether I had a deed for lot 7, square 223, being in doubt about the matter, I answered, "My impression is I have." For a more full answer I refer to my answer and explanation on pages 18, 19, and 20, on my cross-examination by Mr. Webb, in my testimony-in-chief.

Q. Do you wish it to be inferred in your answer to the ques-

635 tion propounded to you in rebuttal by your counsel that Mr. Emory did not rely for security for the material furnished by him to you for the Palace Market building on a legal title in you to that lot 7?

A. I don't understand that question, and unless you point out the question referred to I shall consider this as a trick to put me in a false position and to garble the testimony to suit your ends, as you are worthy of such tricks.

Q. Upon what did Mr. Emory rely as security for furnishing you material for the Palace Market building?

A. Purely upon my promise to pay.

Q. Did not Mr. Emory get his money for the material by execution levied under the mechanics' lien upon that property?

A. Mr. Emory, I understand, received the money to satisfy his judgment after the so-called sale by the marshal of what is now known as the Palace Market to Mr. Alfred Richards.

636 Q. Please examine the portion of the partition of Emory against Brooke Mackall, Junior, filed as an exhibit to the bill in this cause, which embraced a statement of a notice of lien filed previous to the suit of Emory, and state if Emory's execution was not in pursuance of the statute in relation to mechanics' liens in this District.

A. I believe Mr. Emory filed a so-called lien on what is now known as the Palace Market.

Q. Do you not state in your bill in this cause that the consideration for the lot 7 from your father to you was a good consideration?

A. It is impossible for me to recollect all the statements made by me in my bill. All the statements made by me in my bill are correct. (Mr. Newton hands the bill to the witness, who examines it.) After refreshing my memory by looking at the bill I say, Yes; I did say my father promised for a good consideration.

Q. Did you not state in your answer to the bill in cause No. 8038, Leonard Mackall against Brooke Mackall, Junior,
637 and others, that the consideration for the lot was a valuable consideration?

A. It is impossible for me to recollect all the statements made by me in that answer, but all statements made by me in that answer were true.

Q. Have you not previously stated, under oath, that the consideration for the lot consisted in the fact that you would convey the lot on G street to pay the debts of your father's family?

A. That question, also, is a garbled and unfair statement. What I stated in that case was true and speaks for itself.

Q. In giving your testimony in this cause upon the direct — had you forgotten the year and month and day of your birth when you stated that you were four years older in the year 1859 than you actually were?

A. I had not; but, in a hurry, making the calculation in my head I made the mistake, which, when I discovered on reading over my testimony, I corrected at the earliest opportunity.

638 Q. Are you aware that in giving that testimony you were seen to make a calculation of your age with lead pencil and paper?

A. I have no recollection of doing anything of the kind, but I have no doubt that you are able to produce witnesses who will swear to anything, as you have already produced a witness in this case who has shown a disposition to swear to anything in the most reckless manner, and you also produce- witnesses in the other case who have sworn, in the most reckless manner, to what they know to be untrue, and on cross-examination were compelled to admit that

their statements were not only false, but groundless in every particular.

(All the latter part of the answer is objected to by Mr. Newton, and he protests against its going down upon the record.)

Q. How many times, up to the death of your father, did
639 you attempt to have a conveyance of property belonging to him made to you? Please answer yes or no.

A. I will not answer yes or no to any of your questions, because you have shown every disposition to garble statements, to try to put me in a false position in every way by getting me to answer yes or no. I never tried or attempted in any way to induce or compel father to make me a deed for any property. Some time after his promise, in 1859, when I paid the taxes which Mr. Corcoran claimed was due to him before father purchased the property, father suggested and requested that Mr. Corcoran, instead of making a deed to him, should join with him in a deed to me, which Mr. Corcoran or his agent first agreed would be done if it could be done without complicating Mr. Corcoran. After considering the matter for some little while he declined. The deed he executed during his last sickness (my father, I mean) was executed in compliance with his promise to me in 1859 that at some future time he would give me a deed
640 for this property. This and all other acts of his were done of his own free will and accord. The property included in the deed other than lot 7, square 223, which he executed during his last illness, was property that I owned and had deeds for many years before, and he said he desired to convey that also in the deed and all the property included in the deed to Leonard Mackall, trustee, which he did.

Q. Your father died on the 7th of March, 1880, did he not?

A. Yes, sir.

Q. Have you any deed from your father, other than the one you have referred to, to lot 7?

A. I have not.

Q. How many days before his death was the deed that you have referred to executed as alleged?

A. The deed was executed February 27, 1880, I believe.

Mr. Newton announces his cross-examination of the witness closed.

641 Mr. Willoughby has no questions to ask, and the deposition of the witness is here closed.

(S'g'd) B. MACKALL, JR.

Taken and subscribed before me this 11th day of January, A. D. 1883, the witness having been by me, on the 7th day of December, A. D. 1882, as above stated, first duly sworn in this cause.

(S'g'd) LORENZO A. BAILEY,
Examiner in Chancery.

Mr. Newton announces his testimony as closed, and has no further witnesses to offer.

Mr. Willoughby has no further testimony to offer.

By agreement of counsel the hearing is adjourned at quarter past five p. m. *sine die.*

(S'g'd) LORENZO A. BAILEY,
Examiner in Chancery.

DISTRICT OF COLUMBIA, }
County of Washington, } *ss:*

I, Lorenzo A. Bailey, an examiner in chancery in and
642 for the District of Columbia, do hereby certify that in pursuance of an order of the court passed in equity cause No. 8118, between Brooke Mackall, Junior, complainant, and Alfred Richards and others, defendants, now pending in the supreme court of the District of Columbia, and in pursuance of notices from the examiner to counsel for the respective parties to said cause, which notices are hereto attached at page 3 and page 9, respectively, the foregoing depositions were taken down by me, and by me reduced to writing in the presence of and from the statements of the witnesses at the time and place designated in the captain thereof, and were then and there by the witnesses read over and subscribed by them in my presence and in the presence of counsel who were then and there attending, the witnesses having been by me, on the 7th day of December, A. D. 1882, first duly sworn to testify the truth, the whole truth, and nothing but the truth concerning the matters at issue in said cause. I further certify that I am not of counsel for any of the parties to said cause and in nowise interested therein.

(S'g'd) LORENZO A. BAILEY,
Examiner in Chancery.

643 *Motion to Rescind Order of January* 3, 1883, *and to Expunge Certain Testimony, &c. Filed January* 8, 1883.

Supreme Court of the District of Columbia.

BROOKE MACKALL, Jr., }
vs. } Equity No. 8118.
ALFRED RICHARDS *et al.* }

And now comes the complainant & moves the court to rescind the order made in this cause on the 3rd day of January, 1883.

Also to strike from the files of the court the testimony of Leonard Mackall filed on or about the 2nd day of January, 1882.

Also to expunge the cross-examination of complainant taken on behalf of said Leonard Mackall in this cause, with the costs, to be paid by said Leonard Mackall or by his solicitor, as provided by amendment to rule 64 of this court.

W. WILLOUGHBY,
Sol. for Complainant.

644 Take notice that on Monday, the 8th of Jan'y, 1883, or as soon thereafter as counsel can be heard, I shall bring the above motion before the court.

W. WILLOUGHBY,
Sol. for Comp't.

To R. M. Newton, Esq., sol. for def't, L. Mackall.

Order of Court Passed January 8th, 1883.

In the Supreme Court of the District of Columbia. January Term, 1883. In Equity.

The notice of this motion coming on to be heard this day & having been argued by Mr. Willoughby in support thereof—
It is, this 8th day of January, 1883, by the court adjudged and ordered that the said motion be, and the same is hereby, overruled.

(S'g'd) A. B. HAGNER,
Asso. Justice.

645 *Order Limiting Time of Execution of Order of January 3d, 1883. Filed January 10, 1883.*

Supreme Court of the District of Columbia.

BROOKE MACKALL, Jr., *vs.* ALFRED RICHARDS *et al.* } Equity No. 8118.

Ordered, That the time for taking testimony in this cause, under order of Jan'y 3d, 1883, be limited to ten days from this date, Jan'y 10th, 1883 (including Frid y).

(S'g'd) A. B. HAGNER,
Asso. Justice.

646 *Order to Clerk to Issue Subpœnas to Witnesses in Rebuttal. Filed January 10, 1883.*

In the Supreme Court of the District of Columbia, — day of Jan., 1883.

BROOKE MACKALL, Jr., *vs.* A. RICHARDS *et al.* } Equity No. 8118.

The clerk will please issue subpœnas to Brooke Mackall, Jr., & to Fendall E. Alexander, summoning them to appear before Lorenzo A. Bailey, examiner in chancery, at the office of the said examiner, 456 Louisiana Ave., on Thursday, the 11th inst., at eleven a. m., to testify upon cross-examination in said cause pending before the said examiner, the said witnesses having previously testified before said examiner as summoned for the complainant in rebuttal.

(S'g'd) ROBERT M. NEWTON,
Solicitor for Defendant, Leonard Mackall.

647 *Subpœna to Brooke Mackall, Jr., and Fendall E. Alexander. Issued January* 10, 1883.

Supreme Court of the District of Columbia, the 10 day of January, 1883.

BROOKE MACKALL, Jr., *vs.* A. RICHARDS *et al.* } No. 8118. Docket 22.

The President of the United to Brooke Mackall, Jr., Fendall E. Alexander:

You are hereby commanded to appear as witnesses for the complainant before Lorenzo A. Bailey, ex'm., 456 La. Ave., on the 11 day of January, 1883, at 11 o'clock a. m.

Witness D. K. Cartter, chief justice, &c.

R. J. MEIGS, *Clerk, &c.*
By M. A. CLANCEY,
Ass't Clerk, &c.

Return to Above.

Jan'y 13, 1883.—Summoned all Jan. 11th, 1883.

CLAYTON McMICHAEL,
U. S. Marshal.

648 *Motion to Expunge Testimony, with Costs. Filed April* 10, 1883.

Supreme Court of the District of Columbia.

BROOKE MACKALL, Jr., *vs.* ALFRED RICHARDS *et al.* } Eq. No. 8118.

And now comes the complainant and moves the court to suppress the depositions of Leonard Mackall & that part of the testimony of Brooke Mackall, Jr., & F. E. Alexander which was taken upon the cross-examination conducted by counsel for Leonard Mackall & to have the said testimony expunged, with the costs of taking such deposition & testimony, to be paid by the said Leonard Mackall or his counsel, in accordance with rule 64 of this court.

(S'g'd) W. WILLOUGHBY,
Sol. for Complainant.

649 *Notice of Motion to Suppress Depositions. Filed April* 10, 1883.

Supreme Court of the District of Columbia.

BROOKE MACKALL, Jr., *vs.* ALFRED RICHARDS *et al.* } Equity No. 8118.

Please take notice that on Tuesday, the 10th inst., I shall move the court to suppress the depositions of Leonard Mackall & that

part of the testimony of Brooke Mackall, Jr., & F. E. Alexander which was taken upon the cross-examination conducted by counsel for Leonard Mackall & to have the said testimony expunged, with the costs of taking such deposition & testimony, to be paid to the complainant by the said Leonard Mackall or his counsel, in accordance with rule 64 of this court.

(S'g'd) W. WILLOUGHBY,
Sol. for Complainant.

To def't, Leonard Mackall.

Service acknowledged Friday evening, Ap'l 6, 1883, at 4.15.

(S'g'd) S. S. HENKLE,
Of Counsel for Leonard Mackall.

650 *Testimony on Behalf of Defendant, Leonard Mackall. Filed April 10, 1883.*

In the Supreme Court of the District of Columbia. In Equity.

BROOKE MACKALL, Jr., *vs.* ALFRED RICHARDS *et al.* } No. 8118.

Be it remembered that an examination of witnesses was held on the 15th day of December, A. D. 1882, by the defendant, Leonard Mackall, when the within deposition was taken.

I, Henry R. Elliott, an examiner in chancery, did cause to be personally present at my office, 406 5th street, Matthew G. Emory to testify on behalf of defendant, Leonard Mackall, in the above-entitled cause.

(S'g'd) HENRY R. ELLIOTT, *Examiner.*

651 In the Supreme Court of the District of Columbia. In Equity

BROOKE MACKALL, Jr., *vs.* ALFRED RICHARDS *et al.* } No. 8118.

Deposition of Matthew G. Emory, a witness produced and sworn on behalf of defendant, Leonard Mackall, in above-entitled case.

Present: Judge Willoughby, counsel for complainant; W. B. Webb, counsel for defendant Richards; R. M. Newton, counsel for defendant Mackall.

The said MATTHEW G. EMORY, being first carefully cautioned and sworn to tell the truth, the whole truth, and nothing but the truth, deposes and says:

I am 64 years of age; *that* I was born in Pembroke, State of New Hampshire, and now reside in Washington city, D. C.

Being examined by Mr. NEWTON, the witness further deposes and says:

Judge Willoughby objects to the examination of Mr. Emory
652 at this time.

Q. Mr. Emory, you testified on December 1st, 1882, that some time during the late war the complainant in this cause, Brooke Mackall, Jr., showed you a paper which he represented to be a deed to lot 7, in square 223, in this city, from his father to him; do you recognize the person now present as complainant in this cause, Brooke Mackall, Jr., the young man that showed you that paper?

A. I believe it was the 1st of December that I testified, and I don't remember of the lot or square, but know that it was the property at the corner of 14th street and New York avenue, and I know that the gentleman present, Brooke Mackall, Jr., was the one who showed me the paper purporting to be a deed.

Q. Did not you understand at the time that the object of Brooke Mackall, Jr.. was to get credit from you for stone for building
653 upon the lot at the corner of 14th street and New York avenue?

Objected to by Judge Willoughby as leading.

A. I did.

Q. How many visits did he pay you for this purpose?

A. He was there twice, and I believe three times, but I will not be positive about the third time.

Q. State about what length of time elapsed between his first visit and the conclusion of your trade with him.

A. The second visit was made the day after the first; I am quite sure of it. It might have been the second day afterwards, and all was concluded within three or four days.

Q. Did he or did he not read the alleged deed to you?

A. I read it; I had it in my hands and read it; he stood by my side looking over. I read it aloud.

Q. You are the president of the Second National Bank of this city, are you not?

654 A. I am, sir.

Q. Are you a member of any church in this city? If so, please state what church.

A. I am a member of the Methodist Metropolitan church of this city.

Q. You have an extensive acquaintance among the leading and wealthy men of this city, have you not?

A. I think I have.

Cross-examination waived by Judge Willoughby.

(S'g'd) M. G. EMORY.

Sworn and subscribed to before me this 15th day of December, A. D. 1882.

HENRY R. ELLIOTT, *Examiner.*

DISTRICT OF COLUMBIA:

I, Henry R. Elliott, an examiner in chancery, do hereby certify that the foregoing deposition was taken down and reduced to
655 writing by me in the presence and from the statements of the witness at the time and place designated in the caption, and

was then and there read over by me to the witness, and by him subscribed, and that I was attended by the counsel of both parties, respectively, and the witness was first duly sworn to testify the truth, the whole truth, and nothing but the truth touching the matters at issue in said cause.

I further certify that I am not of counsel for any of the parties to said cause or in any manner interested therein.

HENRY R. ELLIOTT, *Examiner.*

656 *Decree of Special Term Dismissing Cause. Appeal Noted. Filed April* 10, 1883.

In the Supreme Court of the District of Columbia, Holding a Special Term.

BROOKE MACKALL, Jr., *v.* ALFRED RICHARDS & Others. } Equity No. 8118.

This cause coming on to be heard upon bill, answer, depositions, and exhibits, and being duly heard and considered, it is by the court, this 12th day of April, 1883, ordered, adjudged, and decreed that the said cause be, and the same is hereby, dismissed, from which decree the plaintiff prays an appeal, which is hereby allowed.

By the court:

MACARTHUR, *Justice.*

656½ *Motion for Rule Against Plaintiff to Furnish Correct Abstract of Pleading and Evidence. Filed June* 12, 1883.

Supreme Court of the District of Columbia, in General Term, — day of ——, 1883.

BROOKE MACKALL, Jr., *vs.* ALFRED RICHARDS *et al.* } Equity No. 8118. Calendar No. 97.

And now comes the defendant, Leonard Mackall, in the above-entitled cause and moves the court for a rule against the plaintiff requiring him to file a correct abstract of the pleading and evidence in said cause.

(S'g'd) S. S. HENKLE,
(S'g'd) ROBERT M. NEWTON,
Solicitors for Defendant, Leonard Mackall.

To Judge Willoughby, solicitor for the plaintiff:

657 Please take notice that we will call up the within motion on Thursday, the 14th inst., at 10 a. m., or before if said cause is reached on the trial calendar previously to said date.

(S'g'd) S. S. HENKLE,
(S'g'd) ROBERT M. NEWTON,
Solicitor- for the Defendant, Leonard Mackall.

Service admitted June 12, 1883.
(S'g'd) W. WILLOUGHBY,
Att'y for Pl'ff.

Proceedings before the supreme court of the District of Columbia, in general term, commencing on the 4th Monday, 28th day, of April, 1884.

Present: Chief Justice Cartter and Justices MacArthur and James

SATURDAY, *July 5th*, 1884.

Session resumed pursuant to adjournment.

Present: Presiding, Mr. Justice Wylie, and Justices MacArthur, Cox, and James.

Decree. Filed July 5, 1884.

Supreme Court of the District of Columbia. In General Term.

BROOKE MACKALL, Jr.,
vs.
ALFRED RICHARDS and WIFE, LEONARD MACKALL, *et al.* } Equity No. 8118.

This cause came on this day to be heard upon the plead-
658 ings, proofs, and proceedings in the cause and upon an appeal from the decree of the special term therein, and, having been argued by counsel, on consideration thereof it is, this fifth day of July, 1884, ordered, adjudged, and decreed—

That the decree of the special term of this court made in this cause be reversed.

That the sale of the premises part of lot 7, in square 223, in the city of Washington, purporting to have been made by the marshal of the District of Columbia on or about the 13th day June, 1870, to the defendant, Alfred Richards, and the conveyance purporting to have been made by the marshal in pursuance of said sale on or about the 7th day of October, 1870, of the said part of said lot 7, in square 223, more particularly described in said conveyance, and all transfers or conveyances depending thereon, be set aside and decreed to be invalid and void and of no effect, and that the complainant is, as to the parties to this suit, the owner of said property
659 and entitled to have the legal title thereof conveyed to him upon payment by him to the defendant Richards of his claim as judgment creditor and for disbursements in connection with said property, to be ascertained by the court.

That this cause be referred to the auditor to ascertain and report to the court in special term the amount of expenditures of said defendant Richards upon the said property beneficial thereto, and of payments for taxes or lawful liens against the same, and also of the rents, issues, and profits received by the said defendant.

(S'g'd) W. S. COX, *J.*

660 *Appeal to Supreme Court of the United States by Alfred Richards. Filed July 8, 1884.*

Supreme Court, District of Columbia.

BROOKE MACKALL, Jr., *vs.* ALFRED RICHARDS *et al.* } Eq. 8118.

And now comes the said defendant, Alfred Richards, and appeals to the Supreme Court of the United States from the decree of the general term passed July 5, 1884, in the above cause against him.

WM. B. WEBB,
For Def't Richards.

The above appeal is allowed this 8th day of July, 1884.
By the court:

MACARTHUR, *Justice.*

661 *Citation on Appeal to Supreme Court United States by Richards.*

DISTRICT OF COLUMBIA, *To wit:*

To Brooke Mackall, Jr.:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next, pursuant to appeal filed in the clerk's office of the supreme court of the District of Columbia, wherein Alfred Richards is appellant and you are appellee, to show cause, if any there be, why the judgment in the said appeal mentioned should not be corrected so that speedy justice be done the parties in that behalf.

Witness D. K. Cartter, chief justice of the said supreme court of the District of Columbia.

July 8, 1884.

D. K. CARTTER,
Chief Justice.

662 *Return to Citation.*

Served a copy of the within citation on Brooke Mackall, Jr., Oct. 7th, 1884.

CLAYTON McMICHAEL, *Marshal.*

663 In the Supreme Court of the District of Columbia, the 10 day of July, 1884.

BROOKE MACKALL, Jr., *vs.* ALFRED RICHARDS *et al.* } Equity No. 8118.

In error.

Know all men by these presents that we, Alfred Richards, Thomas A. Richards, and William A. Richards, are bound unto the above-

named Brooke Mackall, Junior, in the sum of fifteen thousand dollars, to be paid to the said Brooke Mackall, Junior, his executors or administrators; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated this tenth day of July, 1884.

Whereas the above-named Alfred Richards has prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered in the above suit by the said supreme court of the District of Columbia:

Now, therefore, the condition of this obligation is that if the above-named Alfred Richards shall prosecute his said appeal to effect and answer all damages and costs if he shall fail to make good his plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

ALFRED RICHARDS. [SEAL.]
THOS. A. RICHARDS. [SEAL.]
WM. A. RICHARDS. [SEAL.]

Sealed and delivered in the presence of—
CHAS. A. WALTER.

Approved July 11, 1884.

MACARTHUR, *Justice.*

664 AUTHENTICATION OF RECORD.

Clerk's Certificate.

CLERK'S OFFICE,
SUPREME COURT OF THE DISTRICT OF COLUMBIA.

I, R. J. Meigs, clerk of the said court, do hereby certify that the writings annexed to this certificate are true copies of originals on file and of record in said office, and that said originals together constitute the record of the proceedings of said court in this cause.

Witness my hand and the seal of said court this 14 day of October, 1884.

[Seal Supreme Court of the District of Columbia.]

R. J. MEIGS, *Clerk,*
By —— ——,
Assistant Clerk.

Justice's Certificate.

I, David K. Cartter, chief justice of said court, do certify the foregoing attestation by R. J. Meigs, clerk of the said court, to be in due form.

Witness my hand and seal this 14 day of Oct'r, 1884.

D. K. CARTTER, [SEAL.]
Chief Justice.

Clerk's Certificate to Justice's Official Character.

I, —— ——, clerk of said court, hereby certify that David K. Cartter, whose genuine signature is subscribed to the foregoing certificate, was, at the time of signing and attesting the same, chief justice of said court, duly commissioned and qualified.

Witness my hand and the seal of said court this 14 day of Oct., 1884.

[Seal Supreme Court of the District of Columbia.]

R. J. MEIGS, *Clerk*,
By —— ——,
Assistant Clerk.

665 Supreme Court of the United States.

ALFRED RICHARDS, Appellant,
vs.
BROOKE MACKALL, Jr., Appellee. } No. 1085.

It is hereby stipulated that the following is an extract from the minutes of the general term of the supreme court of the District of Columbia at the term thereof commencing the fourth Monday of April, 1884, under the date of July 5th, 1884, to wit: "Adjourned till term in course."

It is also further stipulated & agreed that the justices of the supreme court of the District of Columbia who heard and decided this cause in the general term of said court were Chief Justice Cartter and Justices Hagner & Cox.

It is also further agreed that this stipulation may be filed & annexed to the record of this cause now on file in the office of the clerk of the Supreme Court of the United States, & that this shall constitute a part of such record.

Nov. 6th, 1884.

WEBB & TOTTEN,
Counsel for Appellant.

666 W. WILLOUGHBY,
Counsel for Appellee, Appearing Specially on Motion.

667 [Endorsed:] No. 1085. U. S. Supreme Court. Alfred Richards, app'l't, *vs.* Brooke Mackall, Jr., app'lee. Stipulation of counsel as to record.

[Endorsed:] Supreme Court U. S. 1884, October term. No. 1085. Alfred Richards, app'l't, *vs.* Brooke Mackall, Jr. Stipulation of counsel & addition to record.

[Stamped:] Office Supreme Court U. S. Filed Nov. 7, 1884. James H. McKenney, clerk.

Endorsed on cover: District of Columbia supreme court. No. 106. Alfred Richards, appellant, *vs.* Brooke Mackall, Jr. Filed 15th October, 1884.

124-183

In the Supreme Court of the United States.

ALFRED RICHARDS, *Appellant*
vs.
BROOKE MACKALL, JR., *Appellee.*
No. 1,085.

Appeal from the Supreme Court of the District of Columbia.

Copy of record of decree in Special Term, and all subsequent proceedings.

Decree of Special Term dismissing cause. Appeal Noted.

(Filed April 10, 1883.)

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term.

BROOKE MACKALL, Jr.,
vs.
ALFRED RICHARDS and others.
Equity No. 8,118.

This cause coming on to be heard, upon bill, answer, depositions and exhibits, and being duly heard and considered, it is by the court this 12th day of April, 1883, ordered, adjudged and decreed, that the said cause be, and the same

is hereby dismissed, from which decree the plaintiff prays an appeal, which is hereby allowed.

By the Court—

MACARTHUR,
Justice.

Proceedings before the Supreme Court of the District of Columbia, in General Term, commencing on the 4th Monday, 28th day of April, 1884.

Present, Chief Justice Cartter, and Justices MacArthur and James.

Saturday July 5th, 1884.

Session resumed pursuant to adjournment. Present presiding Mr. Justice Wylie and Justices MacArthur, Cox and James.

Decree.

[Filed July 5, 1884.]

SUPREME COURT OF THE DISTRICT OF COLUMBIA.

In General Term.

BROOKE MACKALL, JR.,
vs.
ALFRED RICHARDS & WIFE & LEONARD MACKALL. } Equity. No. 8,118.

This cause came on this day to be heard upon the pleadings, proofs and proceedings in the cause, and upon an appeal from the decree of the Special Term therein, and having been argued by counsel, on consideration thereof, it is this fifth day of July, 1884, ordered, adjudged and decreed.

That the decree of the Special Term of this court made in this cause be reversed; that the sale of the premises, part of lot No. 7 in square 223, in the city of Washington, purporting to have been made by the Marshal of the Dis-

trict of Columbia, on or about the 13th day of June, 1870, to the defendant, Alfred Richards, and the conveyance purporting to have been made by the Marshal in pursuance of said sale on or about the 7th day of October, 1870, of the said part of the said lot 7 in square 223, more particularly described in said conveyance, and all transfers or conveyances depending thereon, be set aside and decreed to be invalid and void and of no effect, and that the complainant is, as to the parties to this suit, the owner of said property and entitled to have the legal title thereof conveyed to him upon payment by him to the defendant, Richards, of his proper claim as judgment creditor, and for disbursements in connection with said property, to be ascertained by the court.

That this cause be referred to the Auditor to ascertain and report to the court in Special Term the amount of expenditures of said defendant Richards, upon the said property beneficial thereto, and of payments for taxes or lawful liens against the same, and also the rents, issues and profits received by the said defendant,

(Signed.) W. S. Cox,
J.

Appeal to Supreme Court of the United States by Alfred Richards.

[Filed July 8, 1884.]

SUPREME COURT OF THE DISTRICT OF COLUMBIA.

BROOKE MACKALL, Jr., *vs.* ALFRED RICHARDS *et al.* } 8,118. Eq.

And now comes the said defendant, Alfred Richards, and appeals to the Supreme Court of the United States, from the decree of the General Term, passed July 5, 1884, in the above cause against him.

WM. B. WEBB,
For Deft., Richards.

The above appeal is allowed this 8th day of July, 1884. By the Court—

MACARTHUR,
Justice.

Citation on appeal to Supreme Court, United States by Richards.

DISTRICT OF COLUMBIA, to wit:

To Brooke Mackall, Jr.

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next, pursuant to appeal filed in the Clerk's office of the Supreme Court of the District of Columbia, wherein Alfred Richards is appellant, and you are appellee, to show cause, if any there be, why the judgment in the said appeal mentioned should not be corrected, so that speedy justice be done the parties in that behalf.

WITNESS: D. K. Cartter, Chief Justice of the said Supreme Court of the District of Columbia.

July 8, 1884.

D. K. CARTTER,
Chief Justice.

Return to Citation.

Served a copy of the within Citation on Brooke Mackall, Jr., Oct. 7th, 1884.

CLAYTON McMICHAEL,
Marshal.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

The 10th day of July, 1884.

BROOKE MACKALL, Jr., *vs.* ALFRED RICHARDS *et al.* } No. 8,118 Equity. In Error.

Know all men by these presents, that we, Alfred Richards, Thomas A. Richards and William A Richards, are bound unto the above-named Brooke Mackall, Jr., in the sum of

fifteen thousand dollars to be paid to the said Brooke Mackall, Junior, his executors or administrators. To which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents. Sealed with our seals, and dated this tenth day of July, 1884.

Whereas, the above named Alfred Richards, has prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered in the above suit by the said Supreme Court of the District of Columbia:

Now, therefore, the condition of this obligation is, that if the above-named Alfred Richards, shall prosecute his said appeal to effect, and answer all damages and costs if he shall fail to make good his plea, then this obligation shall be void; otherwise, the same shall be and remain in full force and virtue.

ALFRED RICHARDS, [SEAL.]
THOS. A. RICHARDS, [SEAL.]
WM. A. RICHARDS, [SEAL.]

Sealed and delivered in presence of—
CHAS. A. WALTER.

Approved, July 11th, 1884.

MACARTHUR,
Justice

Authentication of Record.

Clerk's Office, Supreme Court of the District of Columbia:

Clerk's Certificate.

I, R. J. Meigs, clerk of the said court, do hereby certify that the writings annexed to this certificate are true copies of originals on file and of record in said office, and that said originals, together, constitute the record of the proceedings of said court in this cause.

Witness my hand and the seal of said court this 14th day of October, 1884.

[SEAL.] R. J. MEIGS, *Clerk.*

Justice's Certificate.

I, David K. Cartter, Chief Justice of said court, do certify the foregoing attestation by R. J. Meigs, clerk of the said court, to be in due form.

Witness my hand and seal, this 14th day of October, 1884.

D. K. CARTTER, *Chief Justice.* [SEAL.]

Clerk's Certificate to Justice's Official Character.

I, , clerk of said court, hereby certify that David K. Cartter, whose genuine signature is subscribed to the foregoing certificate, was, at the time of signing and attesting the same, Chief Justice of said court, duly commissioned and qualified.

Witness my hand and the seal of said court this 14th day of October, 1884.

[SEAL.] R. J. MEIGS, *Clerk.*

SUPREME COURT OF THE UNITED STATES.

ALFRED RICHARDS, *Appellant* / *vs.* / BROOKE MACKALL, JR., *Appellee.* } No. 1,085.

It is hereby stipulated that the following is an extract from the minutes of the General Term of the Supreme Court of the District of Columbia at the term thereof, commencing the fourth Monday of April, 1884, under date of July 5th, 1884, to wit: "Adjourned till term in course." It is also further stipulated and agreed that the Justices of the Supreme Court of the District of Columbia who heard and decided this cause in the General Term of said Court were Chief Justice Cartter and Justices Hagner and Cox. It is also further agreed that this stipulation may be filed and annexed to the record of this cause, now on file in the office of the clerk of the Supreme Court of the United States, and that this shall constitute a part of such record.

Nov. 6th, 1884.

WEBB & TOTTEN,
Counsel for Appellant.
W. WILLOUGHBY,
Counsel for Appellee,
Appearing specially on Motion.

124-185

DEC 7 1887

Supreme Court of the United States.

OCTOBER TERM, 1887.

ALFRED RICHARDS, *Appellant*,
vs.
BROOKE MACKALL.
} No. 106.

Brief for Appellant.

WM. B. WEBB,
ENOCH TOTTEN,
Appellant.

R. O. POLKINHORN, PRINTER.

Supreme Court of the United States.

OCTOBER TERM, 1887.

ALFRED RICHARDS, *Appellant*,
vs.
BROOKE MACKALL.
No. 106.

Brief for Appellant.

This is an appeal from a decree of the Supreme Court of the District of Columbia.

STATEMENT OF THE CASE.

The bill in this case seeks to set aside a deed made by Alexander Sharp, Marshal of the District of Columbia, on the 7th of October, 1870, to the defendant, Alfred Richards, and to have the same declared invalid and void. Part of lot 7, in square 223, situated at the corner of Fourteenth street and New York Avenue, in this city, is the property conveyed by the deed in question. Besides asking to have the deed set aside, the complainant seeks to have himself declared the owner thereof; an account of the rents and profits of the property since its purchase by the defendant; the appointment of a receiver, pending the

proceedings in this case; and asks further that a deed for the property in dispute may be made to him by Leonard Mackall, in whom the title is vested, and who is one of the defendants.

As shown in the pleadings and depositions, the facts of the case are, as follows: in 1851, Brooke Mackall, the father of the complainant, purchased this lot 7, in square 223, from W. W. Corcoran, and W. S. Nichols, trustee, who held it in equal moieties, and paid the purchase money for the same. Nichols refused to execute a deed for the moiety which he held as trustee, and Mackall was obliged to file a bill to obtain such deed, and a decree in his favor was made by the court in 1856. In March, 1852, Corcoran executed a deed for the other moiety of the lot to Mackall, but declined to deliver it until a small sum due to the firm of Corcoran and Riggs for advances on account of taxes was paid. This account for taxes was not paid until some years afterwards, May 13, 1864, and no deed was placed upon record showing title to this property in the said Brooke Mackall, until Sept. 29, 1873. In this condition of things Brooke Mackall gave the lot in question to the complainant Brooke Mackall, Junior, and put him in possession of it. Mackall, Jr., exercised various acts of ownership over the property, subdivided it, collected the rents and profits arising from it, and applied them to his own account; removed the buildings that were standing upon it; caused it to be graded and generally occupied it and treated it as his own, and all with the knowledge and acquiescence of his father, Mackall, Senior. In 1864, Mackall, Jr., commenced the erection of a

building upon the portion of the lot involved in the present controversy, as he says in his deposition, not as his father's agent, but under the verbal or parol gift of it to him and as his own property.

Towards the erection of the building thus commenced upon this property, materials were furnished by several parties, among them George H. Plant, Matthew G. Emery and A. and T. A. Richards. After the building had reached about two stories, and perhaps a part of another story, it was stopped and was carried no further by Mackall. Not being paid for the materials furnished by them, Emery and Plant filed notices of lien under the act for the enforcement of Mechanics' liens, and commenced proceedings to enforce such liens and collect the amount due them for such materials. A. and T. A. Richards, who had taken the note of Mackall, Jr., endorsed by Mackall, Sr., for the amount due them, commenced suit upon said note. Judgments were recovered in these several actions, execution issued thereunder and levied upon the part of lot 7, in square 223, subjected to the said liens under the proceedings therein, which was duly sold by the Marshal of the District of Columbia, and bought by Alfred Richards. On the 7th of October, 1870, Alexander Sharp, the Marshal of the District of Columbia, conveyed to Alfred Richards, reciting the proceedings under which he made the levy and sale, and the amount for which such sale was made, the piece of ground contained within the courses and distances following, that is to say, part of lot No. 7, in square 223, beginning at the northwest corner of said square and running thence south 44 feet; thence westerly

to the west end of the lot, thence, in a northerly direction with the west line thereof, to the north line of said lot, and thence with said north line to the place of beginning. Under this deed Richards entered into possession of the part of lot in question, completed the building thereon, which he found abandoned and in ruins, and has occupied it ever since.

The complainant, Brooke Mackall, Junior, now seeks to set that sale aside, have himself declared the owner of the property, and an account from Richards of the rents and profits received therefrom.

It appears further in the case that in 1865 the complainant, Brooke Mackall, Junior, obtained from the corporation of Washington a deed for this lot 7, in square 223, under a sale thereof for taxes, and that this deed was obtained with the full knowledge and consent of his father, Brooke Mackall, Senior; that in June, 1869, and afterwards in September, 1869, he—that is, the complainant—instituted proceedings in this court to restrain in one case the corporate authorities, and in the other the marshal of the District of Columbia in the performance of certain acts in respect of this property, in which proceedings he alleged, with the knowledge and consent of his father, that he was the owner of the said lot; that in another proceeding in this court, in which the title to this lot was in question, and to which his father was a party, the complainant was examined as a witness, and under oath stated that his father had made him a deed to the said lot, which deed he refused to produce; that to the several parties from whom he purchased the materials used in the erection of the

building commenced by him upon this lot, he represented himself to be the owner thereof, and upon the strength of such representations obtained credit for such materials, and that to Matthew G. Emery, one of such material men, he exhibited a deed of this property from his father to himself.

The complainant is the principal, if not the only witness sworn in this case, and he testifies unqualifiedly that his father gave him the property in question and put him in possession of it; that he exercised an ownership over it with his father's knowledge and consent, and held himself out to the world as the owner from the time of such gift in 1859 to the seizure and sale of it by the Marshal of the District to Richards, and that in February, 1880, a few days before his death, his father conveyed it to him in confirmation of the gift made to him years before.

In 1863, the Government of the United States took possession of a portion of lot 7, in square 223, and occupied it with buildings for the use of the Pay Department, for some time, and in 1867, the complainant made a claim for compensation for its use and occupation. In this claim he alleges his ownership and is supported in that allegation by his father. The claim was allowed, and complainant was paid, as owner, a large sum of money for the use of this property.

The special term of the court below dismissed the bill, but on appeal to the general term, that decree was reversed and the sale was set aside on the ground that the description of the property, both in the advertisement and in the Marshal's deed were so am-

biguous and uncertain as to render the sale void. (See *Mackall* vs. *Richards*, 3 Mackey, 271.)

Assignment of Errors.

1. The court in General Term erred in reversing the decree of the Special Term, and in declaring the sale void.

2. The General Term erred in not dismissing the bill:

Because the complainant was guilty of gross laches;

Because the matters and things involved in the proceedings are *res adjudicata;*

Because the regularity of a judicial sale, where the jurisdiction of the court directing it appears upon the face of the proceedings, cannot be attacked collaterally;

Because persons who are indispensible to a decree, are not made parties.

The bill assigns twelve distinct reasons (5) why the sale of the property made by the Marshal on the 13th day of April. 1870, (2) was void, that is to say:

"1. The sum at which it was bid off was grossly insufficient and inadequate compared with the value of the property;

"2. The executions on which the sale was made were issued without authority, for the reason that at the time other executions had been issued, which had not been returned;

"3. Such executions were not in accordance with the judgments, said judgments being personal judgments only, while the executions directed the sale to be of specific property described therein;

"4. Such execution did not sufficiently describe the nature of the interest of the debtor in said prop-

erty, whether legal or equitable or otherwise, nor define the boundaries thereof so that the property could be identified, nor did they conform to the description in the declarations in said suits or either of them;

5. The court rendering the judgments in the first two cases named in paragraph 5 did not have jurisdiction to render any other than personal judgments, the proper court for the enforcement of mechanics' lien being in equity;

6. The said Brooke Mackall, Sr., was not a party to any of the said proceedings or suits, although he then held the legal title;

7. The sale of an equitable interest in real estate cannot be made under executions at law, whether by enforcement of a mechanics' lien or otherwise;

8. The interest of Brooke Mackall, Sr., whether legal or equitable, could not be divested from him by any proceeding to which he was not a party; said complainant then had no interest except that arising from a verbal promise to convey and his action thereon, as before described;

9. The alleged levies and sales were made under levy after the return day of the writs;

10. The said executions were issued and delivered to D. S. Gooding, who was then the marshal of the District of Columbia, whereas the advertisement, sale and conveyance purport to have been made by Alexander Sharp, who was marshal at the time of sale;

11. The advertisement of sale does not sufficiently describe the property nor the nature of the interest to be sold, nor does it agree with the other proceedings in the cause;

12. The conveyance by the marshal does not conform to any of the other proceedings in the cause."

Points and Authorities.

I.

The complainant has failed to make out a case either upon his bill, or the proof taken thereunder, that authorizes the interference of a Court of Equity. He is not entitled to equitable relief by his own showing. The rule on this subject is thus laid down:

"But, whatever may be the object of the bill, the first and fundamental rule, which is always indispensable, to be observed, is, that it must state a case within the appropriate jurisdiction of a Court of Equity. If it fails in this respect, the error is fatal in every stage of the case, and can never be cured by any waiver or course of proceedings by the parties, for consent cannot confer jurisdiction not vested by law. And although many errors or irregularities may be waived by the parties, or be cured by not being objected to, the court itself cannot act except upon its own intrinsic authority in matters of jurisdiction, and any excess will amount to usurpation, which will make decretal orders a nullity or infect them with ruinous informality."

Story's Equity Pleadings, Sec. 10.

And again:

"Courts of Equity, it may be recollected, are guided in respect to the range of their jurisdiction by fixed and unvariable bounds, founded, in some cases in the principles and original constitution of these courts, and in others in immemorial usage, but from which they are in no case justified in departing. In order, therefore, to entitle the plaintiff to its assistance, it is strictly necessary that he make out such a case in his bill as does, in fact, authorize the court to take cognizance of the suit."

Barton's Suits in Equity, 44.

And see further, Story's Equity Pleadings, Sec. 28, 257.

This Rule, with the reasons upon which it is founded, has been again and again announced and sustained in the cases reported both in this country and in England. So universally is this the case, that it cannot be controverted at this time.

See *Munday* vs. *Knight*, 3 Hare, 497;
Lord Uxbridge vs. *Stanley*, 1 Vesey, 56;
Dilly and *Heckrotte* vs. *Barnard*, 8 Gill & Johns., 171, 185;
Wright vs. *Dame*, 22 Pick., 55;
Harrison vs. *Nixon*, 9 Pet., 503;
Slater vs. *Maxwell*, 6 Wall, 276.

Tested by this rule, the bill of complainant fails to disclose a case upon which the court has any power to act. In its stating part the bill sets out the history of the transactions which led to the sale by the marshal to Richards, and avers that Richards, after he took possession, agreed to hold the part of lot sold until he was reimbursed his debt and expenditures, and then to reconvey to complainant; that Richards has been more than reimbursed, &c., &c.

A court of equity could not relieve against the breach of such an agreement as that alleged, in any event, and, in this case, that breach is not made a ground for such relief, the principal object of the bill being to procure an annulment of the deed by the marshal to Richards and an account of rents and a conveyance from Leonard Mackall. There is no averment in the bill that gives to the Court of Equity jurisdiction in the matter of the alledged breach of the pretended agreement on Richard's part. It is not pretended that there was any con-

sideration for such agreement, or that anything was done under it that would give it any legal effect.

All that remains of the bill is a statement in detail of the grounds of objection to the Marshal's sale, a catalogue of what it calls the defects in the proceedings under the process that came into his hands in execution of the judgments at law. But this is not supported by any averment that brings these objections within the jurisdiction of a Court of Equity. The cases cited show that such averment is absolutely indispensable, and that nothing will cure the want of it. It will not do to state that the complainant is "informed and believes" that a sale which a Court of Equity is asked to set aside is defective; the averment of that fact must be made distinctly and positively, and the grounds upon which a Court of Equity obtains cognizance of it must be distinctly set out. It is submitted that the bill is fatally defective in this particular, and that a decree cannot be made under it.

Hipp v. *Babin*, 19 How., 276.

II.

But if it shall appear to the court that the complainant has stated a case that brings him within the jurisdiction of the court of equity, there is another rule applicable to courts of equity which would seem to be fatal to the relief he seeks. Nothing can be better settled than that where the answer of the defendant denies in distinct and unequivocal terms the facts set forth in the bill upon which the complainant founds his claim to equitable relief, such de-

nial must be overcome by the testimony of two witnesses, or by one witness and corroborating circumstances. In this case the complainant is the only witness examined as to any point upon which the claim for relief is founded, and he is totally unsustained by corroborating circumstances. The allegation in the bill (4) that Richards promised to release the property as soon as he should reimburse himself is denied in the answer, (34) and no proof is offered in support of such averments except that of the complainant himself. (42.) Richards denies this in his testimony also. (87.) This brings the case within the rule, which is elementary in its character, and which has been recently distinctly recognized in a case that went up from the Supreme Court of the District of Columbia, to the Supreme Court of the United States.

Vigal vs. *Hopp*, 104 U. S. 441.
Story's Eq. Jur., sec. 1528.

III.

Again, whatever way be thought of the questions already discussed as to the right of the complainant to equitable relief in any event, and especially in the form and under the averments and proofs submitted, this proceeding has for its object the vacation of a sale made under a judgment of a court of competent jurisdiction in the premises, and *is a collateral proceeding* as far as that sale and the deed of the marshal under it are concerned.

A judicial sale cannot be impeached in a collateral proceeding, except in cases where it appears, upon the face of the proceedings themselves, that the court

had no jurisdiction. In such cases the judgment is a nullity, and will be set aside when collaterally drawn in question. But in the proceedings to set aside such judgment, the want of jurisdiction must appear affirmatively. There must be an averment in form and in such unequivocal terms that the defendant cannot be misled as to its character—that the court rendering the judgment was without jurisdiction. In the case at bar there is no such averment. It is not pretended that the court had not complete jurisdiction of the parties and of the subject-matter; but the allegation is that the defendant had not such an interest in the property in question as would support a judgment such as was rendered by the court. This does not change the character of the proceeding in any respect. The object of the bill is to set aside, *in a collateral proceeding*, a sale made under the judgment of a court having competent and complete jurisdiction, and, it is submitted, that this cannot be accomplished.

Story's Eq. Jur., 1574 *a*.

This question has been so frequently before the courts, and the rulings have been so uniform, that all that can be needed is a reference to the decisions.

In *Thompson* vs. *Tolmie*, 2d Peters, 163, a case that went up from the Circuit Court of the District of Columbia, the court say:

"The general and well-settled rule of law in such cases is that when the proceedings are collaterally drawn in question, and it appears upon the face of them that the subject-matter was within the jurisdiction of the court, they are voidable only. The

errors and inaccuracies, if any exist, are to be corrected by some direct proceeding, either before the same court, to set them aside, or in an appellate court."

The first inquiry in the case cited was whether it appeared upon the proceedings that the court had jurisdiction of the subject-matter, and the court, after fully considering it, reached the conclusion that the jurisdiction was complete. Attention is invited especially to this discussion.

Ludlow vs. *Ramsey*, 11 Wallace, 587, is the case in which the rule in question is distinctly announced. The court say:

"As the bill in this case is a collateral proceeding to set aside the sale, mere errors and irregularities in the original proceeding will not suffice. It must be shown that the court had no jurisdiction."

Cooper vs. *Reynolds*, 10 Wall., 308, is cited and approved in *Ludlow* vs. *Ramsey*, in which case the court say:

"In the present case there is a sufficient writ of attachment, its levy and return, the judgment of the court on trial by jury, the order to sell the property, the sale under the *venditoni exponas*, the writ of possession, sheriff's deed, and delivery of possession under order of the court. To hold them void is to overturn the uniform course of decision in this court, to unsettle titles to vast amounts of property long held in reliance upon these decisions, and in our judgment would be to sacrifice sound principle to barren technicalties."

And see also *Griffith, et al.*, vs. *Bogert*, 18 Howard, 164;

Grigno's Lessee vs. *Astor et al.*, 2 How., 343;

Rorer on Judicial Sales states the rule thus, p. 202, Sec 480 :

"If the jurisdiction of the subject-matter appears on the face of the proceedings in which the sale is made, the errors or mistakes, if any there be, cannot be examined when brought up collaterally."

Elliott vs. *Piersoll*, 1 Pet., 328 ;
Davis vs. *Helbig*, 27 Md., 452.

In reference to this very question of assailing a judicial sale in a collateral proceeding, this court said :

"So long as this judgment remains in force, it is in itself evidence of the right of the plaintiff to the thing adjudged, and gives him a right to process to execute the judgment; the errors of the court, however apparent, can be examined only by an appellate power; and by the laws of every country a time is fixed for such examination, whether in rendering judgment, issuing execution, or enforcing it by process of sale or imprisonment. No rule can be more reasonable than that the person who complains of an injury done him should avail himself of his legal rights in a reasonable time, or that that time should be limited by law."

Voorhees vs. *Bank*, 10 Peters, 474; and see
Blaine vs. *The Charles Carter*, 4 Cr. 328;
Sumner vs. *Moore*, 2 McLean, 59.

IV.

The complainant in this cause cannot be heard to complain in this collateral proceeding, because—

1. He has been guilty of gross *laches;*

2. He is estopped by his own proceedings in two former causes of a like nature, in the same court in regard to the same matter.

The complainant knew all the circumstances now complained of 12 years before he filed this bill. The sale was made June 30, 1870, and the bill was not filed until April 11, 1882. This was not within a reasonable time. He saw the purchaser pay the money, enter into possession of the lot, and then spend ten or eleven thousand dollars in completing the unfinished buildings thereon. He held his peace until the property became much appreciated in value by the improvements of the streets, the general growth of the city, and the money expended in improvements by Richards. No excuse has been offered for this delay. Such a delay is unreasonable.

Howard vs. *R. R. Co.*, 17 Wall., 78;
Twin. Lick Oil Co. vs. *Marbury*, 91 U. S., 587;
Marsh vs. *Whitman*, 21 Wall., 178.

The obligations here are mutual. Could Richards, after the lapse of 12 years, be heard to say that he ought to be relieved from the purchase in consequence of such objections as are tendered by Mackall? and that he should have his money refunded by Emery and Plant?

And again: On the 2d day of May, 1871, Alfred Richards, the appellant here, with several other judgment creditors of the appellee, Brooke Mackall, exhibited their bill against the appellee and other defendants for the purpose of enforcing the collection of their judgments out of the remainder of the lot unsold by the Marshal in his sale of June 13, 1870, involved in this case. That bill alleges that the Marshal, by virtue of certain executions "took and sold" the part of this lot 7 now called for, particularly describing it (137). The complainant in this cause, and the appellee here, did not set up as a defence to that action any of the defences now relied

upon, except that he had only an *equitable* title; he constructively admits the regularity of the sale. (143.)

Again: On or about September 15, 1869, the present appellant exhibited his bill in the court below, (93) setting out the judgments in favor of Emery, Plant, Richards and others, and the levy by the Marshal upon the part of the lot in question, and the advertisement for sale; also that he was "equitably entitled to the whole of said lot;" that the description of the part of the lot levied upon in the advertisement was "not only an indefinite but an impossible description" and that a sale under it would prejudice his rights, and prayed that the parties might be enjoined from selling. No mention is made in this bill of any irregularities in the judgements, execution or in the levies. Answers were filed by the defendants to the bill, and there the cause seems to have been dropped. Now, if Mackall then considered himself wronged by any informalities or erroneous proceedings or writs, he should have asserted his rights then; but he did not speak then when he should have spoken and therefore he cannot now be heard when the purchaser for the space of twelve years has reposed in confidence in a judicial sale, for the security of his investment. The matters and things involved in this bill are *res adjudicata.*

V.

The parties to the original actions at law are indispensable to this. Without them no decree can be made, and the bill must be dismissed.

Harwood vs. *R. R.*, 21 Wall, 78.

If the sale is to be cancelled, should not Emery and Plant be called upon to restore the money paid to them out of the purchase money? If these errors are found to exist, the plaintiffs, in the law causes, who ordered the erroneous writs to be issued, and who are responsible for all errors, should be compelled to refund the money obtained by them through their erroneous or irregular executions and levies. They, and not Richards, were at fault.

That this is a collateral proceeding there is not much room for doubt. The sale which is attacked was made on the authority of two executions issued in two actions at law to enforce two separate judgments. One of these judgments was in favor of George H. Plant, and the other was in favor of Matthew G. Emery. A levy of some kind upon something seems to have been made upon an execution issued on the judgment in favor of A. & T. A. Richards. This may have been a *renditioni exponas.* One of this firm became the purchaser, and paid $2,500.00. With this fund the expenses of sale and so forth were paid; the two judgments owned by Emery and Plant were wholly paid and satisfied, and a part payment was made of the judgment held by the co-partnership firm. None of these persons are made parties to this cause, that is to say, neither Emery, Plant nor T. A. Richards.

Practically, this amounts to a proceeding to correct errors in the executions issued to enforce judgments at law, or, in other words, to do that by an original bill which can only be done by an appeal or writ of error. The sale was made June 13, 1870, and this bill was filed April 11, 1882, *twelve years after-*

wards; and the proof shows that Richards, immediately after the sale, *entered into possession* and expended about $11,000 to complete the unfinished building standing thereon.

VI.

No one of the twelve reasons assigned for disturbing this judicial sale is sufficient in any event.

First. That the price was inadequate and insufficient. This of itself is no ground for setting aside a sale, however effected. Mr. Richards at the time of the sale thought he was buying all of the lot north of the 44-foot line, running from 14th street parallel with New York avenue, to the rear of the lot. The fact is, as this court has since decided, he was buying only the abandoned foundation walls of the present building, and the ground upon which they were standing. He paid a higher price than he ought to have paid. In order to make such an objection available there must be superadded either the fact of fraud *per se*, or that the price is so grossly out of proportion to the value of the land as to raise the presumption of fraud. Now, in this case, fraud is not alleged, nor is it pretended that there is any ground from which fraud may be presumed.

Johnson vs. *Dorsey*, 7 Gill, 287;
House vs. *Walker*, 4 Md. Ch. Dec., 62.
Warfield vs. *Ross*, 38 Md., 85;
Cooper vs. *Galbraith*, 3 Wash. C. C., 546;
Clarke vs. *Trust Company*, 100 U. S., 149.
Erwin vs. *Parkham*, 12 How., 197.

Second. That the sale was improperly made because the executions were issued without authority, there being unsatisfied executions outstanding when the executions under which the sale was made were issued. In this objection the fact seems to have been overlooked that before the sale was made the outstanding executions referred to had been returned "*nulla bona.*" The first executions, in two of the cases, were returned "*nulla bona*" March 3, 1869, and levy made under the second executions March 24, 1869.

Remington vs. *Linthicum*, 14 Pet., 84;
Barney's Lessee vs. *Lemon*, 6 Har. & Johnson, 204;
Wheaton vs. *Sexton*, 4 Wheat., 503.

Third. The executions were in exact accordance with the provisions of the law under which the proceedings were instituted, and are not obnoxious to the objection made in the bill.

Fourth. The executions are in strict accordance with the act of Congress for the enforcement of mechanic's liens, and there is no defect in that regard. That act prescribes in distinct terms what the judgment shall embrace, and in this case the executions conform to the provisions of the act.

The first, sixth and seventh sections of the "mechanics lien" law of 1859, in force in this District when these proceedings were had, and which are deemed the only sections necessary to refer to in connection with this cause, (11 Stat., 370; R. S. D. C., p. 83), are as follows:

"Any person who shall hereafter by virtue of any contract with the owner of any building, or with the

agent of such owner, perform any labor upon, or furnish any materials, engine or machinery, for the construction or repairing of such building, shall, upon filing the notice prescribed in section second of this act, have a lien upon such building and the lot of ground upon which the same is situated, for such labor done or materials, engine or machinery furnished, when the amount shall exceed twenty dollars."

SEC. 6. "The proceedings in action to enforce such lien shall be the same as in other actions, except as otherwise provided in this act; and if judgment be rendered for the plaintiff, he may have execution issued *against the premises*, and thereupon the marshal shall proceed as upon other executions upon real property.

SEC. 7. "The liens created in pursuance of the provisions of this act shall have precedence over all other liens or incumbrances which attached upon the premises subsequent to the time at which such notice was given. If, upon a sale of the premises or execution, the proceeds be insufficient to pay all such liens, the court shall order them to be paid in proportion to the amount, respectively due to each *and any other property of the defendant not exempt from execution, may be sold to satisfy such execution.*

Fifth. No such objection exists as is here stated. The proceedings were instituted under the act of February 2d, 1859, which was then in full force. It was not until afterwards that the present law, requiring all liens to be enforced in equity, was passed. The court had complete jurisdiction, and it was not ousted by the subsequent act. (See R. S. D. C., Sec. 808.)

Sixth. Brooke Mackall, Junior, was the owner of the property, to all intents and purposes, and that was enough, under the act, to enforce mechanics'

liens. He was in possession, and that is such evidence of ownership as estops him in a proceeding like the present.

Seventh and Eighth. These objections are involved in the last, and are met by the same fact of ownership.

See Philips on Mechanics' Liens, Secs. 66, 67, 75, and 188, and cases cited in notes.

Ninth, Tenth, Eleventh, and Twelfth. It certainly cannot lie in the mouth of a defendant in execution to object, at this late day, to the mere forms that attended the sale made by the marshal under process against him in the hands of that officer.

1. The ground upon which the court below rested its decree, has been practically, if not directly taken away by this court since the decree appealed from was made. The decree below in this case was based solely on the ground that the description of the property was so ambiguous and uncertain as to render the sale void. In the case of *Mackall* vs. *Richards*, (112 U. S., 369,) the bill herein before mentioned, praying a sale of all that part of lot 7 remaining unsold, might be sold to pay the judgments mentioned in the bill with the proceedings came before this court, and the question presented for decision was, how much of lot 7 remained unsold?

This court, in determining how much of lot seven had not been sold, *i. e.*, how much had been sold, used this language:

"We are of opinion upon the whole case, that the record fails to show that any part of lot 7, outside of the piece upon which the building at the north-

east corner of the lot stands, was sold or conveyed by the Marshal to Richards."

2. A deed will not be declared void for uncertainty, as long as it is possible, by any reasonable rules of construction, to ascertain from the deed what property was intended to pass.

By the above judgment, this court has practically declared what are the boundaries. (See *Abbott* vs. *Abbott*, 51 Me., 582; *Bond* vs. *Fay*, 12 Allen, (Mass.), 88; *Crafts* vs. *Hibbard*, 4 Metc. (Mass.), 452; *Stone* vs. *Stone*, 110 Mass., 279; *Harvey* vs. *Mitchell*, 31 N. H., 575; *Kruse* vs. *Wilson*, 79 Ill., 233; *Andrews* vs. *Murphy*, 12 Ga., 431. See also *Mulford* vs. *La Frame*, 26 Cal., 88; *Stevens* vs. *Mayor, etc.*, 14 J. & S. (N. Y.), 274; *Wendell* vs. *Jackson*, 8 Wend., (N. Y.), 183; s. c., 22 Am. Dec., 635; *Bass* vs. *Mitchell*, 22 Tex., 285; *Bosworth* vs. *Sturtevant*, 2 Cush. (Mass.), 392; *Newson* vs. *Pryor*, 7 Wheat. (U. S.), 7; *Hart* vs. *Hawkins*, 3 Bibb, (Ky.), 502; s. c., 6 Am. Dec., 666.)

The rule of practice inherited from Maryland and established in the lower court, in reference to issuing *alias* executions, is that where one execution has been issued and returned *nulla bona* by the marshal, an alias execution may be issued at any time thereafter, provided that not more than twelve years shall be allowed to elapse. The common law rule as to "a year and a day," has no application in such a case.

Thompson vs. *Beveridge*, 3 Mackey, 170;
Horsey vs. *Beveridge*, 4 Mackey, 291.

The first writs of *fieri facias*, issued in the Plant and in the Emery case, and returned March 3, 1869, appear to have been returned by "D. P. Gooding, Marshall" (15, 19); but there is no proof beyond this in the case, to show that he actually was the marshal at that date, and on the contrary, there is a recital in the Marshal's deed to Richards, (25) declaring that the second writs were issued February 26, 1869, to Alexander Sharp, "said Marshal." The new executions are attacked because they were issued as alleged, five days before the original writs had been returned. It is not by any means clear from the record, that the writs which were levied by Sharp ever even came to the hands of his predecessor. Indeed, the presumption seems to be the other way. The last writs were issued by the clerk, and bear date Feb'y 26, 1869, but there is nothing to show that they reached the Marshal's office on or before the 3d day of March, 1869. They may have been held by the clerk or the attorney, during the delivery of the office by the retiring Marshal to his successor. We have also the statement (in his deed) by the new Marshal that the writs *were actually issued to him.* (25.) This is not inconsistent with any rule or presumption. Marshal Gooding, having retired from office, would undoubtedly have a right, and it would be his duty to *return* the old writs to the clerks office, and this he could do at any time; he could be compelled to do this. The writ of *fi. fa.* in the court below is not directed to the officer by name, but is directed to "the Marshal of said District."

There is an essential difference in a case of a levy on real estate an done on personal property, and there

is no good reason why the execution of the writ begun by the outgoing, may not be completed by the incoming officer. There may be many cogent reasons why the new officer should take up and complete the execution of the writ. This technical rule had its origin at the common law; but at common law real estate could not be sold on a writ of *fieri facias*. Hence, the rule has no fair application to this case. Real estate cannot be taken into custody by the Marshal, so as to give him an interest in the property as can personal property.

Bellinghall vs. *Duncan*, 3 Gilm., 480;
Holmes vs. *McIndoe*, 20 Wis., 689;
Sumner vs. *Moore*, 2 McLean, 59;
Tarkington vs. *Alexander*, 2 Dev. & B., 87;
Freeman on Executions, § 291.

And in any event, the rule does not apply except in cases when the outgoing Marshal *has actually entered upon the execution* of the writ of *fi. fa.* And in most of the cases the rule is declared to be that he has the authority to proceed, and may, by the party in interest, be compelled to proceed, but they do not hold that the successor may not complete the execution of the writ.

Freeman on Executions, § 291;
36 Am. Decisions, note, p. 705.

At this late day these errors, if errors they be, cannot be relied upon. In any event all presumptions will be taken in favor of the validity of the proceedings. The *court* undoubtedly may, without the return of a former writ, permit an *alias fieri facias* to issue (Free-

man on Ex'ns §52); and the presumption will be in a collateral proceeding, as this is, that it *was* issued by such authority in the absence of proof to the contrary. There is abundant authority for the issuing of an *alias* execution in a case where the original writ has been issued in due season, (Freeman on Executions, §51). And finally, mere errors in issuing an *alias* writ of *fieri facias*, whether in regard to its form, or the time and manner of its issue, while they may make it *voidable*, do not render it void. (Freeman on Executions § 55.)

VII.

Mackall, Junior's, title was perfect, as far as the defendant Richards was concerned, and the sale of it under execution, even if impeachable at this time at all, must be sustained by the court. The fact that the firm of which he was a member were the plaintiffs in one of the executions under which the sale was made does not affect Richards as a purchaser. He purchased in good faith. Unless the complainant has shown some fraud on his part affecting the sale. This he has not attempted to do. Mackall, Senior, the father, had put the complainant, the defendant, in possession in execution of a parol gift of the property levied on, recognized him as owner, and permitted him to obtain credit on the faith of such gift and possession; and, what was more important, permitted him—nay, encouraged him—to acquire a tax-title to the property, to have it confirmed by deed, and to set that title up in support of a claim for the use and occupation of

a part of this same property. And in this connection attention is called to the fact that Mackall, Senior, desired to have the deed from Corcoran made directly to the complainants, in which deed he offered to unite.

In *Neale* vs. *Neale*, 9 Wall, p. 1., the Supreme Court says:

"Equity protects a parol gift of land, equally with a parol agreement to sell it, if accompanied by possession, and the donee, induced by the promise to give it, has made improvents in the property."

And see, further, on same point—

1 Leading Cases in Equity.

American note to *Lester* vs. *Foxcroft*, 567, 569.

Finally, the attention of the court is invited to the fact that the complainant bases his right to appear in this cause and ask the interference of this court, upon the ground that by a deed from his father, Mackall, Senior, made in February, 1880, he acquired the legal title to this very property. According to this claim, he was clothed with an equitable title, when the judgments were recovered under which the property in dispute was sold; that under them only the title that he possessed could be sold, and that now, having acquired the complete title, he is authorized to have the purchaser at the judicial sale declared a wrongdoer, and treated as such.

It is submitted that, in any event, this after acquired title, enures to the benefit of the party who purchased it in good faith at a sale under a judgment in which complainant was the defendant in execution, and certainly is a case like the present, where the

deed of 1880 is shown to have been made in confirmation of a parol gift under which complainant had entered into possession and exercised rights of ownership.

The decree of the court below should be reversed and the cause should be remanded with instructions to dismiss the bill.

WM. B. WEBB,
ENOCH TOTTEN
Appellant.

In the Supreme Court of the United States.

ALFRED RICHARDS, *Appellant*,

vs.

BROOKE MACKALL, JR., *Appellee.*

No. 106.

Points and Argument of Appellee.

Statement of the Case.

The bill in this case, which with the exhibits occupies pages 1 to 31 of the record, was filed by Mr. Brooke Mackall, Jr., appellee, to set aside a sale of the Marshal of the District of Columbia, of certain property situated at the southwest corner of 14th street and New York avenue N. W., being part of lot No. 7, in square 223, a plat of which will be found at page 2 of the record. The property in controversy is represented by the letters B, C, D, H, and is occupied by a building known as the Palace Market.

The alleged sale purported to be in pursuance of three executions upon common law judgments (see deed, p. 25), the executions themselves being set out as exhibits to the bill (pp. 15, 19, 23). The first two direct the money be made from a part of the lot described as follows: "Part of lot 7, sq. 223, in the city of Washington, beginning at the northeast corner of said square, thence south 44 feet, thence west to the west line of the lot, thence in a northerly direction with the west line to the north line of said lot, and thence with said north line to the place of beginning," an impossible description, as the diagram will show. These two executions were directed to be issued in pursuance of proceedings under the mechanics' lien law. The third execution (p. 23) is an ordinary execution, issued upon a judgment at law, recorded by A. & T. A. Richards, who became the purchasers at the alleged sale, the said Alfred Richards being the appellant here. These executions issued to D. S. Gooding, Marshal, but the sale was by A. Sharp, Marshal (p. 3.)

The bill sets forth an agreement for a purchase by Brooke Mackall, Sr., father of the appellee, in 1851, (p. 1,) a decree for the conveyance of a moiety thereof in 1856, (pp. 1 and 10,) and a conveyance of the other moiety in 1865 (p. 1.)

It also sets forth that the father promised, verbally, in 1859 to convey said property to this appellee and put him into possession, who built and expended large sums of money thereon. This was all the title held by the appellee at the time of the sale.

In 1873 B. Mackall, Sr., conveyed the property to Joseph B. Hill, as trustee, (p. 27,) and in 1874 B. Mackall, Sr., and said Hill conveyed to Leonard Mackall, trustee, for the sole use and benefit of said B. Mackall, Sr. (p. 28;) and in 1880 B. Mackall, Sr., conveyed all his interest in the property to this appellee, requesting his trustee, Leonard Mackall, to convey the legal title to this appellee, which, however, he refused to do.

At the commencement of this suit, considering these execution sales to be invalid, the equitable interest of this property was in appellee, and the legal title in Leonard Mackall, trustee, who, for that reason, was made a formal party defendant. Exhibits are attached to the bill setting forth:

Ex. 1, original agreement with Corcoran to sell in 1851 (p. 7.)
Ex. 2, bond from Corcoran (p. 7.)
Ex. 3, proceedings to procure deed from Nicholls (p. 9.)
Ex. 4. court proceedings, &c., relating to 1st execution (p. 11.)
Ex. 5, court proceedings, &c., relating to 2d execution (p. 16.)
Ex. 6, court proceedings, &c., relating to 3d execution (p. 21.)
Ex. 7, advertisement of sale (p. 24.)
Ex. 8, marshal's deed (p. 25.)
Ex. 9, deed from Mackall, Sr., to Hill, trustee (p. 27.)
Ex. 10, deed from Mackall, Sr., and Hill to Leonard Mackall, trustee (p. 28.)
Ex. 11, deed of equitable interest from Mackall, Sr., to appellee (p. 30.)

The property was appraised by citizens summoned by the marshal at $15,000 (p. 21,) but was bid in by Richards, one of the execution creditors, and this appellant, for $2,500, one-sixth of its appraised value (pp. 6 and 7.)

The grounds for setting aside the sale are set forth in the 16th paragraph of the bill (p. 5.)

The bill also sets forth the grounds for and asks that an account be taken of the rents and profits since 1870, since which time it has been in possession of the appellant.

The answer of Richards and wife, (pp. 32 to 36,) admits substantially the history of the title, except that it alleges that B. Mackall, Sr., made a conveyance to appellee in 1859, (par. 5, p. 32;) claims that two of the executions were according to mechanics' lien proceedings under which judgments were confessed, (par. 6;) admits taking possession of the property, and alleges completion of building, payment of taxes, &c., (par. 9;) denies that appellee ever tendered payment, or in good faith ever sought settlement; admits the execution of the several deeds filed as exhibits with bill, (par. 10;) admits that deed of February 22, 1880, of B. Mackall, Sr., to appellee was made, but says that parties interested have instituted suits to set it aside, (p. 12;) admits that suit in equity has been brought by Richards to subject the remainder

of the lot to payment of balance of judgment not satisfied by marshal's sale, and referring to such cause No. 2,373, (par. 13;) denies accountability for profits, (par. 14;) denies non-payment of taxes, (par. 15;) and denies invalidity of sale for the reasons set forth in the bill, and claiming to have made the purchase in good faith, (par. 16.)

Leonard Mackall, trustee, also filed an answer, (p. 36,) which however cannot affect the questions now before the court, and which was wholly impertinent. We consider it wholly unnecessary to refer to this or to the testimony, which he persisted in taking in the cause, and which occupies nearly the last half of the record, not only because it is impertinent, but because he has taken no appeal to this court.

There can be nothing bearing upon any question before this court, except the pleadings and exhibits, (pp. 1 to 36.)

Testimony of appellee, (pp. 40 to 50.)

Exhibits, (pp. 72 to 80.)

Testimony of Matthew G. Emery, (pp. 80 to 85.)

Testimony of appellant, Richards, (85 to 91.)

Testimony of Wm. Forsyth, (91 to 92.)

Possibly some exhibits from pp. 92 to 125, and testimony of Alexander, (p. 128,) and of appellee, (pp. 132 to 134.)

The testimony of appellee sustains the allegations of his bill.

M. G. Emery, (p. 80,) is introduced by defendant to show that sometime in 1863 he saw a deed from B. Mackall, Sr., to his son, the appellee.

His cross-examination, however, (pp. 81 to 87,) showed that he had but little knowledge upon the subject.

Richards' testimony pp. 85 to 91, relates simply to moneys paid out by him upon the property, negotiations relating to a compromise, and to a tender, not denying any material statement of appellee.

Forsyth, surveyor, examined for defendant, to produce plat which, however, does not appear in this record.

At pages 93 to 103 is a copy of proceedings in a suit commenced by appellee against Richards and others in 1869, in which appellee set up, as he does in this cause, a claim of an equitable interest in this property, to which answers were filed; but as this does not appear to have any connection with the pleadings, and does not contradict any averments of the bill or testimony of the appellee, and no action or decree was taken therein, it is not seen how it can have any bearing upon the case.

From p. 103 to 125 are copies of certain papers filed by claimant in the Third Auditors' Office, in which claim is made for rent during the war, and in which both appellee and his father allege and show that the father had made a parol gift of the land to his son, but the deed had not been executed for reasons stated by the father at p. 119.

At p. 128 is testimony of F. E. Alexander showing a tender to Richards, and at p. 132 is the testimony of B. Mackall, Jr.

as to showing a deed to Emery, and as to the subdivision of the surveyor showing the correctness of the diagram, and that the property fronted on New York avenue.

Brief and Argument of Appellant.

I.

The appellant claims that the sale to Richards should be set aside, because:

1st. It was of an equitable interest on executions at law.

2d. Two of them issued to one marshal, and the sale was made by his successor.

3d. Because, when two of them were issued, the judgments were dead, and should have been revived by *scire facias*.

4th. There was no proper evidence of levy.

5th. The property was not properly described in any levy or in the advertisement.

6th. There is a variance between the deed, the execution, and the levy.

7th. For these reasons the property sold for $2,500, when the appraised value was $15,000 and the actual value much more, giving to Richards at least $12,500 for nothing.

II.

At the hearing below two preliminary suggestions were made by the Court: first, as to whether the suit brought by complainant to enjoin the sale might not have been pleaded in bar as a pending suit; and, second, whether the conveyance of the father to the son in 1880 was not invalid for the reason that at the time the property involved in this suit was in the adverse possession of Richards.

As to the first, we say that it was not set up as a bar in pleading, and was never suggested as a bar by counsel. There was no decree in the case. That was to enjoin a sale not then made; this is to set aside a sale and deed completed for reasons not then in existence. Then the son had no deed from his father and nothing but a claim resting wholly in parol; now he has a conveyance from his father of all the interest he then had, and whose title, as well as the son's, is now claimed to have passed to Richards, though he was no party to the suits or proceedings. If the former suit should be regarded as a pending suit, we would now have the right to proceed under it, and there would be no difficulty in consolidating it with this, as no rights were determined in it.

As to the second suggestion, see

Cresop *vs.* Hudson, 9 Gill, 269.
Schauferman *vs.* O'Brien, 28 Md., 565.
Hadduck *vs.* Wilmarth, 5 N. H., 188.
Hall *vs.* Ashby, 9 Ohio, 96.
Roberts *vs.* Cooper, 20 How., 483.
5 Cr. C. C., 470; 4 Cr. C. C., 81.

Besides, if adverse possession is of only a part of the tract and the grantor is in possession of a part, the deed is good.

4 Bac. Abr., 495; 1 Gill, 500; 1 John., 345.

This conveyance, too, was given only in pursuance of a previously existing right of the son to have such a deed, and one which he could have enforced by a bill for specific performance. In such a case the deed would have been good at common law.

2 Coke's Inst., 563–4.
1 Ba. Abr., 576.
7 Yerger, 390.
10 Yerger, 664.
1 Dana, 17.
2 J. J. Marsh., 606.

Even if such deed were invalid it could not affect this case, as the claim all along was that it was the property of appellee; and that it was sold as such; and cause No. 2,373, described in Par. 13 of defendant's answer, which was decided in 112 U. S., 369, was based upon the claim that appellee had an equitable interest in the property.

III.

We claim the sale to be void because, first, it was made upon executions issued upon personal judgments obtained at law, while the legal title was in B. Mackall, Sr., not a party to such judgments, and only the equitable title was in B. Mackall, Jr.

Two answers to this proposition were claimed by the defendant, one, that in fact the son had the legal title, and the other, that two of the executions, Emery's and Plant's, were issued in pursuance of proceedings to enforce mechanics' liens.

In support of the proposition that the son had, in fact, the legal title, an unrecorded tax deed was put in as an exhibit, but without any proof whatever of its validity, and M. G. Emery testified that in 1864 he saw a paper in the hands of the son purporting to be a deed of the lot from the father to the son, which the son said was such a deed. (P. 81.)

As to the tax deed nothing need be said.

As to the testimony of Emery we say:

He did not know the signature to the instrument, nor the signature of either of the witnesses, nor who they were, nor whether it bore the signature of the wife. (Pp. 82, 83.)

He could not state a single word of its contents. (Pp. 83, 84.)

He could not state whether or not it had any covenants or conditions. (83.)

He knew nothing of the consideration. (83.)

He thought it was about the time of the war. It certainly was over eighteen years ago. (81.)

Surely such evidence is incompetent to establish a deed as a muniment of title.

In 1 Starkie on Evi., 354, the author says: "When sufficient evidence has been given of the loss of the deed, or other instru-

ment, of which the court are to judge, it must be shown that the deed existed *as a genuine instrument.* * * * Its execution must be proved according to the nature of the instrument, if a deed by means of an attesting witness, or by proof of his handwriting, if he be dead, or that of the *obligor*, if the deed be not attested in the manner already stated."

See also Clarke *vs.* Courtney, 5 Peters, 818.
Goodwin *vs.* Lake, 1 Atkins, 446.
Tayloe *vs.* Riggs, 1 Peters, 600.
3 Comstock, 424, 7 Wend., 125.

But it was argued that if the son stated that it was the deed of his father he might be estopped from denying it.

There are several answers to this.

It was a mere word, disputed and doubtful.

It could not operate as an estoppel unless by acting upon it a party is prejudiced, nor unless designed to cause the party to so act.

Emery says he had in his own mind the idea of a mechanics' lien, but he did not communicate it. (P. 84.)

Even if stated it may have been only to show himself to be a man of property and of ability to pay.

It is not pretended that he stated what his purpose was, or that he had any. He did not say that the deed conveyed the legal title. Even if an estoppel it could be only to the extent of Emery's lien. Richards is in no position to claim such an estoppel.

He appears only as a purchaser at an execution sale, and had full notice that the son denied the legal title to be in him. Emery would not be prejudiced by the son's having only an equitable title, for he could place a lien against an equitable title which could be enforced in equity.

Richards did not act upon the idea of an estoppel and could not.

See 5 Wall., 795.

Neither he nor Emery claimed it as such in the suit brought to enjoin the sale, but both then claimed that appellee had a tax title; their answers relying upon this alone. (Pp. 99, 102.)

A declaration of the son could not affect the title of his father, and as there is no evidence of any covenant of warranty in such deed, neither he nor his grantee could be estopped from setting up an after-acquired title.

It is only by a covenant of warranty in the solemn form of a sealed instrument that a grantor even can be estopped from setting up an after-acquired title even against his grantor. The son now has the title of his father through a deed, and stands in his place, and it is absurd to claim that he is estopped by a mere word from claiming the interest he has so acquired.

The records of the court were easily accessible and he had no right to act upon a mere oral declaration. He did not even inquire whether the father had any title. (93 U. S., 337.)

Emery waived his lien and any idea of estoppel by accepting a personal judgment. and his claim has been entirely satisfied.

As to estoppel by covenant of warranty, see—

19 Wall., 20; 12 Wall., 358.
4 Kent's Com., marg. p. 262.
11 Wend., 116, and cases there cited.

Even if such a deed existed, it would have conveyed only an equitable interest, for the reason that it was not recorded within six months from its execution. Greenleaf's Lessee *vs.* Birth, 6 Peters, 313. (Secs. 446 and 447, R. S. D. C.)

It could have conveyed the legal title to only a moiety, for the reason that at that time, in 1864, the father had himself only such a title, the deed from Corcoran not having been delivered until November, 1865.

This would make the father and son tenants in common of a legal title in 1870, the time of the sale, if the deeds had been recorded, and in such case the sale would have been void, because it was for a specific portion by metes and bounds.

See 4 Conn., 510; 9 Mass., 34.
28 Conn., 184; 28 Texas, 51.
7 Cush., 368, Shaw, J., an equity case.
12 Cush., 398; 12 Mass., 347.
24 Pick., 332; 18 Maine, 229.
38 N. H., 133; 20 N. H., 17.
9 Vt., 138.

But the statement of Emery is not true. When called upon in 1869 to defend his right to sell upon his execution, he filed an answer, in which he set up a tax title, for the purpose of showing the legal title to be in complainant, and he never then suggested such a title as this. This was nearly fourteen years ago, and when the facts must have been much more fresh in his mind than now, and when he was called upon by the strongest motives to say this, if it were true. But he did not suggest it, and this is almost conclusive that he then had no such thing in his mind.

He may be correct in this, that some deed was shown him, and the testimony of complainant shows how easily he might have mistaken one deed for another.

The existence of such a deed is to be proved positively by the defendant. His own answer, as to this not being based upon personal knowledge, is of no force.

Now we have the positive statement of the complainant against that of Emery.

Besides, there is the sworn statement of the father, first in his answer in equity, cause No. 2,373, and again in his statement to the War Department, upon the application for rent of the property in 1865, long before any of these controversies. Upon this application for rent there was the strongest motive to produce this deed, had it been in existence. The reasons then given for there being no such deed, and all the surrounding circumstances, show that there was no such deed. (P. 119.)

In view of all these considerations it is most confidently claimed that in 1870, at the time of the sale, there was no legal title in complainant.

But we claim further, that the defendant is estopped from now setting up such a legal title by the fact that in 1871 he filed his bill in equity, No. 2373, which was *founded upon the fact* that the title of complainant was an equitable one. He has obtained his decree upon this being an established fact, and has been pursuing the complainant for years upon this ground, and up to the present time. (See Mackall *vs.* Richards, 112 U. S., 369.)

Now, when we take him upon this ground, established by decree of this court, how can he turn about and say that the title is a legal one and not an equitable one? In that suit he based it principally upon the idea of the deed not being recorded, which is just as good law now as it was then. Whether upon a correct principle or not, it is an established fact, and he is estopped by it.

He cannot take both positions, when it is for him, claim it as an equitable title, and when it is against him, deny it and say it is a legal title.

In that case he distinctly set forth that he had acquired only an equitable title to the property now in controversy. Now he seeks to deny this.

It is not for Richards to talk of estoppels. We claim him to be most effectually estopped from setting up for his present purposes a legal title in complainant.

I respectfully ask counsel for defendant or the court to answer this question. If, as this court decreed in that case between these parties, that Richards, as he had claimed in his bill, had no adequate remedy at law to collect from lot 7 one-half his execution, how could he collect the other half by his execution at law out of the same lot held by the same title?

We, say then, the alleged legal title in complainant at the sale is not shown, because—

1st. Evidence of the deed through which it is set up is incompetent.

2d. Such alleged deed was not recorded.

3d. If in evidence it could have conveyed but a moiety.

4th. Two witnesses and circumstances deny Emery's statement, and,

5th. Richards is estopped from setting up such legal title.

IV.

But Richards claims the sale to be justified because two of the executions were in pursuance of mechanics' liens.

This would not be so, even if true, for there is no claim but that the Richards execution was upon a personal judgment at law.

When a sale is made upon several executions, and one of them is unlawful, the sale is void.

Brown *vs.* McKay, 16 Indiana, 484.

Where the execution exceeds the judgment by $2.40 the sale was held void in 62 Maine, 428. And so where it was for interest which the judgment did not bear.

8 Iredell, N. C. L., 221; 7 *Id.*, 1.

An execution to enforce a mechanics' lien must be *in rem.*

2 McA., 409.

Phillips on Mechanics' Liens, p. 433, &c.

A personal execution and an execution *in rem* are of different natures, and a sale could not be made upon them together.

See 8 Blackf., Ind., 460.

Mechanics' liens and executions upon real estate, are statutory proceedings, and strict conformity is required. (See 6 Wait's Act. and Def., 725, &c., and cases there cited.)

The judgment in the Emery case is, "That the plaintiff recover *against the defendant* one thousand and eighty-one dollars and fifteen cents, with interest from November 12, 1864, with the sum of $20.55 for his costs of suit, and that he have execution therefor from and after the third day of September, 1867."

This is also the substantial form of the judgment in Plant's case, which is only for $127.78, &c.

Both were entered upon the written consent of the defendant embodied in the judgments, and show upon their face that they were the result of a compromise, that a personal judgment should be rendered with a stay of execution for one year, relieving the land.

The distinction between a judgment *in rem* and a personal judgment is clearly described in Phillips *vs.* Coburn, 2 McA., 409, and in Phillips on Mechanics' Liens, Ch. 27, and may easily be seen by an examination of the statute, which permits no personal judgment, but allows execution for the surplus only *after* the lien is exhausted.

The proceedings in the Emery and Plant cases could not be sustained by the mechanics' lien law, because:

1st. They were at law when they should have been in equity, (Sec. 808, R. S. D. C., first passed February 22, 1867.) Process was delivered to the marshal and served July 16th, 1867.

2d. If the defendant had only an equitable interest the lien should have been laid upon such equitable interest, and for this reason the proceedings should have been in equity.

3d. The person holding the legal title was not a party and his title could not be affected.

4th. The sale of an equitable interest could be only in equity and the mechanics' lien law does not change this principle.

5th. The lien was not properly laid, because it treats the front as on Fourteenth street, while it is alleged and not denied that the front is on New York avenue.. (P. 133.) It will be seen that there was a subdivision of several lots fronting on New York avenue, and the sale as made would be a destruction of the value of all of them. (P. 41.) Mackall *vs.* Richards, 112 U. S., 369.

6th. The description of the south line is unintelligible.

7th. The description in the deed does not agree with that of the lien as laid.

8th. The executions which purport to be *in rem* are not authorized by the judgments which are personal.

See Tidd. Pr., 913.
1 Term, 80, 6 Ill., 525.
2 Tucker's Com., 339.

9th. The contract upon which was based this right to a lien was not with the *owner* of the legal title. One not owner of such title could not make a contract to divest the real owner of it, nor affect his legal right.

Secs. 703 and 4, R. S. D. C.

It was claimed that because the summons in each of these cases was dated January 19, 1867, (pp. 11, 16,) a few days before the passage of the act requiring enforcements of liens to be in equity, February 22, 1867, although not put into the marshal's hands for service until July 16, 1867, (pp. 12, 16,) the remainder of the proceedings might be at law instead of in equity.

But this is effectually disposed of by the following cases, which hold that where the law is changed as to proceedings in courts which are based upon statutes, further proceedings even in pending cases must be according to the law *as changed*, unless there be a reservation in the statute changing the law as to pending cases, and there is no such reservation here.

Railroad Co. *vs.* Grant, 98 U. S., 398.
Insurance Co. *vs.* Ritchie, 5 Wall., 541.
Ex parte McArdle, 7 Wall., 507.
Assessors *vs.* Osbornes, 9 Wall., 567.
United States *vs.* Tynen, 11 Wall., 88.
6 Cr., 307; 2 Peters, 492; 16 Ohio, 571.
12 Am. Dec., 480, *n.*

V.

The sale was void because the Emery and Plant executions issued to one marshal D. S. Gooding, while the sale and conveyance upon the same executions were by his successor, A. Sharp. (Pp. 3, 15, 19, 20, 22, 23, 24.) This is not denied.

The term of office of Sharp, marshal, commenced March 17th, 1869.

In McFarland *vs.* Groin, 3 How., 717, it is said:

"It is a well settled principle of law, that if an execution come to the hands of a sheriff to be executed and his term of office expires before he executed it, he is bound, nevertheless, to complete the execution."

In Purl *vs.* Duvall, 5 H. & J., 69, an execution came to the hands of one sheriff, and he not having completed it, a writ of *venditioni exponas* issued to his successor about three years later,

and sale was made by the successor. Ejectment was brought by the *defendant in execution* against the assignee of the purchaser. Upon this point being made, it was claimed that the plaintiff had his remedy by motion to quash this execution.

But the court overruled this, saying:

"The appellee's counsel does not controvert the correctness of the principle, but argues that the *venditioni exponas* was the mandate of the court in the nature of an interlocutory order, and, therefore, if erroneous, voidable and not void, and that being voidable, the lessor of the plaintiff on the return of the process ought to have moved the court to set it aside, and having failed to do this, he is precluded from taking advantage of its irregularity in a collateral way. In answer to this objection it is sufficient to say, that no express order appears in the record that the clerk should issue such a writ as has been issued, and if writs of execution are supposed to be issued under an implied authority of the court, such authority can only be implied in those cases where the execution is warranted by principles of law. As the writ, therefore, was directed to Darnall instead of Maddox, *it was void and everything done under it must be considered as a nullity.*"

Sec. 994, R. S. U. S., provides for the issuing of a "new process" in such cases to the successor, though it was held that Sec. 28 of the Judiciary Act, which provided that the marshal to whose hands the execution came might execute it after going out of office, was not thereby repealed.

14 How., 563.

But under this section of the Revised Statutes "new process" is necessary to qualify the successor.

See 7 Am. Dec., 726; 21 *id.*, 62.

36 Am. Dec., 704, and note, where the authorities are collected.

The two executions of Emery and Plant were issued more than a year and a day after the stay of execution expired, and no former executions having been issued *and returned*, without any writ of *scire facias*.

Executions were stayed until September 3, 1867. Those upon which sale was made issued February 26, 1869. Previous executions had issued, but they were not returned until March 3, 1869.

See Tidd's Pr., 912, 1,003, 4; 4 McLean, 133.

2 Bacon's Abr., p. 730; 3 Cr., Ct. Court, 323.

2 Call., Va., 133.

There is a conflict of authority as to whether this defect is a mere irregularity which should have been remedied by motion, or whether it renders the sale absolutely void.

The latter is held in 8 Humph., 408; 4 Litt., 309; 1 Dev. Law, 338.

Certainly the father had no standing in court to make any such motion.

Richards is not an innocent purchaser. He is himself responsible, with others, for the irregular procurement of these executions, and in many cases of irregularities a distinction is made between a purchase by an execution creditor and a third party, and especially where a great sacrifice has been made.

After a year and a day, at common law, a judgment in a personal action could not be revived by *scire facias* and the plaintiff's only remedy upon it was an action of debt.

The statute of Westminster, 2, (13 Edw., 1,) ch. 45, made a change, that if the plaintiff should come into court after a year a *scire facias* might be issued, &c.

If the writ was not sued out within a year and a day it was necessary to revive the judgment by *scire facias* before it could be issued. Upon a return *nulla bona* the writ might be renewed, or if part of the debt had been levied a *fi. fa. might* be issued for the residue, but the first writ had to be first returned, because the second writ recited the first and the return to it, and was based upon that return.

In all renewed writs the alias was tested on the day the former was returnable.

In Maryland the omission to issue a writ within a year and a day necessitated the issue of a *scire facias.* The effect of this writ of *fi. fa.* not having issued within a year and a day was then that the judgment was dead and could not have authorized this writ.

VI.

There is no proper evidence of any levy having been made within the sixty days at which time the several executions were returnable.

In the papers of the Emery case is an unsigned memorandum of a levy having been made upon the 24th of March, 1869, upon four executions, Emery's, Plant's, Parkinson's, and Owen and Wilson's. (Pp. 20, 21.) But there is no evidence as to by whom this memorandum was made or how it got among the papers. Certainly the marshal is not connected with it. Upon the day of sale, June 13, 1870, a declaration is made that levy was made March 24, 1869, but this is not proper evidence that it was done at that time. There is no memorandum in Plant's case, but upon the execution is, under date of June 13, 1870, a reference to the memorandum in Emery's case.

If it be true according to this memorandum, then it was improper to make a sale upon a subsequent levy in Richards' case and omit the executions in the cases of Owen and Wilson, and Parkinson, which were not satisfied, as the record shows.

In the Richards case there is a declaration, June 13, 1870, that a levy was made August 10, 1869. But there is no other evidence of this except the unsigned memorandum to that effect in

the Emery case. Such memorandum describes a specific portion, and certainly this could not be proper in an execution confessedly personal.

If it be held that the judgments in the Emery and Plant cases and consequent executions were *in rem.*, the judgments and executions in the Richards case and Parkinson's, and Owen and Wilson's case, being personal, how could there be a joint levy or a levy upon which a single sale could be made?

Unless a proper levy be made within the sixty days at which the execution is returnable a sale cannot be made upon such execution.

Wheaton *vs.* Sexton, 4 Wh., 503.

VII.

The description in the alleged levies and in the advertisement were so vague and ambiguous that no proper sale could be made.

That relating to the south line is so unintelligible that no person would be willing to subject himself to the litigation inevitable therefrom, and this alone would necessarily cause very great sacrifice.

See Freeman on Executions, Sec. 281.
11 Barb., 173; 4 Peters, 201.
22 Ala., 437; 4 McLean, 329.
13 John., 550; 18 John., 107.
2 Hill, 552; 44 Mo., 267; 3 Barb., 215.
15 Peters, 184, 215, 275, 319.

This is the ground upon which the Court below, without passing upon the other grounds, set aside the sale; and reference is specially made to the opinion in the case 3d Mackey, 271.

See also Mackall *vs.* Richards, 112 U. S., 369.

In Mackall *vs.* Richards, 112 U. S., 369, this Court held that a sale by a court of equity would be improper without a judicial determination of these same boundaries. If so, would not a sale at law with the same indefinite boundaries be improper for the same reason? In that case this indefiniteness is fully discussed and shown to be fatal to any sale.

In this case, also, the claim of the appellee that the front is on New York avenue is also sustained, and for this and other reasons the sale could not be sustained as a sale under mechanics' lien proceedings.

VIII.

The advertisement of sale specifies the right, title, and interest of B. Mackall, Jr. (P. 24.) *But no intimation is given as to what such interest is, and there is no record anywhere to show what it is.* How can a purchaser obtain any knowledge upon the subject? Under these circumstances it was inevitable that there should be, as there was, an immense sacrifice, and that no one but an execution creditor should buy at such a sale.

Sale upon an execution at law ought not to be of an interest of a party, but should be of the property itself. Especially would it be improper when such interest is wholly undefined, and there is no possible means of ascertaining, by record or otherwise, what it may be. In this case the record showed a pending suit in which the defendant in the execution denied under oath that he had any legal title, and it was not claimed in such suit that he had anything but an unrecorded tax title of five years before, in which of course the public could have no confidence, and which was confessedly worthless.

The deed is manifestly unsupported by any of the proceedings. In this, the south line is stated to be "westerly" instead of "west," and instead of saying as in the advertisement of sale the right, title, and interest, it specifies the property itself. Had other purchasers known that they could have obtained such a deed would they not have bid more than $2,500?

Besides, the sale was upon another writ, which does not appear here. What has become of the execution of Owen and Wilson? What, too, of that of Parkinson appearing in the memorandum of levy? Left out entirely.

But we see them again in equity cause No. 2,373.

Does not all this show actual fraud and unfairness in attempting to obtain an advantage not given by the proceedings upon which the sale was made?

IX.

We will comment upon some points made by appellant in the Court below.

The defendant said that a judicial sale cannot be impeached in a collateral proceeding.

In the first place, this is not a "collateral proceeding." It is a direct proceeding to *set aside* the deed and to have it declared void.

The case of Thompson *vs.* Tolmie, 2 Peters, 163, cited by the counsel, was an ejectment case. There had been a sale in a chancery case made by order of the court, and which *had been confirmed* by the chancery court: Held that the mistakes of the chancery court could not be questioned in this ejectment suit collaterally. In this case is recognized the distinction between a direct and collateral proceeding. (P. 165.) In that case, too, the mistakes sought to be corrected were proceedings *before decree.*

In Ludlow *vs.* Ramsay, 11 Wall., 587, there was an attachment proceeding in a chancery cause and an order of sale, and the sale had been *confirmed by the Court.* The effort was to correct irregularities in the attachment proceedings before the decree.

Cooper *vs.* Reynolds, 10 Wall., 308, was an ejectment case, and the effort was to correct errors in the attachment proceedings, upon which the suit was brought, in which there had been a sale. Those were errors which could have been corrected upon appeal, and, therefore, plainly could not again be reviewed by another

court in a collateral proceeding like an ejectment suit. In that case, too, the purchaser had been put into possession by a writ of *habere facias*. In the case at bar the purchaser took possession *vi et armis*.

In Griffith *et al. vs.* Bogert, 18 How., 164, the suit was ejectment, a collateral proceeding, and in the former suit the precise question had been raised, and brought before the court and considered, and thereupon the order of sale was made, and was then *res judicata*. "The objections to this sale do not reach the power of the court or the authority of the sheriff to sell." Such objections could not be heard in a *collateral* action.

McGoon *vs.* Scales, 9 Wall., 30, was an ejectment case. The objections did not go to the authority of the officer, which was expressly stated as one ground of the decision. Errors *prior* to the judgment could not be considered, especially in a collateral action.

In Voorhees *vs.* Bank of the United States, 10 Peters, there was a sale confirmed by the court, and it was held that errors *prior* to the judgment could not be corrected collaterally.

See 28 N. Y., 578.

Girgnou's Lessee *vs.* Astor, 2 How., 343, was an ejectment case, and it was sought to allege errors which had been raised and considered in the former cause, and definitely *passed upon* by that court.

All these cases were decided upon the principle of *res judicata*, and that matters which had been considered by such court, and from which an appeal might have been had, could not be reviewed in a merely collateral action.

On the other hand, upon a direct proceeding to set aside a deed of sale, different rules prevail, though it is not pretended that matters *res judicata*, or which should be corrected by appeal, can be corrected in any other proceeding, except in certain well known cases of equitable cognizance, such as fraud, new evidence, etc.

Thus in Cocks *vs.* Izzard, 7 Wall., 559, a bill was filed in equity to set aside a judicial sale, and on account of proceedings at the sale it was set aside, simply because the purchaser made declarations that operated to deter others from bidding, by which he was enabled to purchase at a sum "hardly equal to the rental value."

The court say:

"It is insisted that the complainant should have availed himself of the summary mode by petition or motion to the court to have had the sale set aside and resale ordered. But this objection cannot prevail. It is needless to inquire whether he could have obtained his object in this way, as *by not pursuing it he did not forfeit his right to sue in equity*, and the defendant has surely no right to complain, for he has now ample opportunity to make defense and vindicate his integrity."

That at the time of the sale the holder of the legal title, Brooke Mackall, Sr., was not a party to the suit or execution, and he therefore could not have appeared in the suit at law and moved to quash the execution. He afterwards conveyed his legal title to the defendant, Leonard Mackall, and subsequently transferred his equitable interest to the complainant, who is now invested with the rights to set aside this sale that existed in Brooke Mackall, Sr. The appellee is not estopped by any covenant from setting up any after-acquired title. Nor could his after-acquired title enure to the benefit of the purchaser.

Hegeman *vs.* Jackson, 1 Wend., 402.

The authorities we have cited show that even the defendant in the execution holding the legal title has the right to the aid of the court of equity under such circumstances. How much more has he the right to it in virtue of his successorship to the rights of his father, and of his having even now only an equitable title, the legal title being still outstanding, which would deprive him of the right of ejectment.

The cases we have cited show still further the propriety of going into equity, from the fact that it is not claimed or alleged that the deed of the marshal is void upon its face, but its invalidity is to be shown by extrinsic testimony. The deed does not upon its face state, for example, that the sale was of an equitable interest only. In order to show that such interest was merely equitable, resort must be had to evidence *dehors* the deed itself. Whether this be by parol testimony or record evidence does not change the principle. The records of the recorder of deeds are not court records, and frequently very thorough search is required to determine where the legal title may be. Where the defect of a deed does not appear *upon its face*, it constitutes a cloud upon the title, which it is within the province of a court of equity to remove.

Jackson *vs.* Webb, 7 Wend., 83; 6 Peters, 95; 1 John, Ch., 517.
Slater *vs.* Maxwell, 6 Wall., 273.
Story's Eq. Juris., Sec. A., 699, 700, 701.
16 New York, 519; 3 Head., Tenn., 41.

This ground of jurisdiction, to wit, that the deed is a cloud upon the title, is much stronger when actual possession is claimed and held under it, as in this case.

But the conclusive reason for sustaining the equitable jurisdiction is that complainant has not the legal title, and therefore could not sue at law.

See Mackall *vs.* Richards, 3 Mackey, 271.

X.

Now we claim that in view of all these considerations a court of equity will not allow Richards to obtain, as he has at least,

$12,500 for nothing. It must be apparent that this great sacrifice was, in part at least, caused by these defects and irregularities. Though irregularities may sometimes not of themselves alone be sufficient to avoid a sale, if a material injury is shown to arise from them, they will be sufficient. It must be borne in mind that for most of these irregularities Richards is himself responsible, and there is no case of an innocent purchaser here. The very fact that this property lying in the heart of the city has ever since laid idle, and that no purchaser would touch it, is a demonstration that these defects of sale materially affect its market value.

Where land valued at $1,000 sold for $600, a sale was for that reason set aside.

21 Ala., 650–630; see also Hemp, 715.

Mere inadequacy may not be sufficient to avoid a sale, but if there is a reasonable ground to believe that such inadequacy, especially when very gross, resulted from irregularities, then a sale would be set aside.

This is not a case where there has been any unreasonable delay is asserting our rights. There have been frequent attempts to get a just settlement without litigation. In 1873 a tender was made of all Richards' debt, principal, interest, and costs. (P. 128, &c.) There has been a constant assertion of this claim ever since 1869, before the sale in 1870. About 1879 a suit was brought in ejectment to recover this property at the instance of parties interested, and as soon as this terminated this suit was brought. In Russell *vs.* Southard, 12 How., 155, &c., a delay of 19 years and eight months was held, not a waiver of the right of review of such a proceeding. There have been no improvements except the completion of a building then partly erected, and from this Richards has received nearly $20,000 in rents and profits, getting nearly the amount of his bid in one year. We offer in the bill, and are willing to make all proper deduction for all money he has expended, and for all just claims, and no possible injustice to Richards is asked, nor can arise from setting aside the sale. It is only a question as to whether he shall be permitted to hold what it was worth at the time, at least, $12,500, for nothing, under the color of legal forms. If there be any reasonable grounds for saying so, equity will say he shall not.

As is said in Freeman on Executions, Sec. 308, citing authorities.

"If the property has manifestly been sacrificed, or if any other serious wrong has resulted to any one from the sale, the courts will gladly seize upon any irregularity, and perhaps magnify its importance in order to find a legal justification for such measures as will clearly subserve the rules of justice."

XI.

The decree of the court below is that the appellee is entitled to have the *legal title* conveyed to him upon payment by him to Richards of his claim as judgment creditor, and for disbursements in connection with the property. (P. 238.) The meaning of this is not quite plain, as the *legal title* was in Leonard Mackall.

We ask, however, that the opinion or decree of this Court may be such that there can be no question as to the appellee's obtaining *possession* at once so that he be no longer deprived of it; and that Richards can have no pretence for prolonging the litigation in court below and by appeal, with the property still in his possession.

W. WILLOUGHBY,
Counsel for Appellee.

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FILED
DEC 7 1887

In the Supreme Court of the United States.

OCTOBER TERM, 1887.

ALFRED RICHARDS, *Appellant*,
vs.
BROOKE MACKALL, *Appellee*.
No. 106.

ADDITIONAL BRIEF FOR APPELLEE.

W. WILLOUGHBY,
Counsel for Appellee.

W. H. MOORE, PRINT., 510 ELEVENTH ST.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1887.

ALFRED RICHARDS, *Appellant*,
vs.
BROOKE MACKALL, *Appellee.*
} No. 106.

Additional Brief for Appellee.

I.

The original brief was made before it was known by appellee what would be the assignments of error of appellant, and it reviews all of the errors of the sale claimed to be invalid.

According to the assignments of error it would seem that most of these defects of sale are not now to be disputed, but conceding them there is left for discussion only such errors as are assigned. The first assignment of error, it is supposed, is not specific enough to require discussion. If so, the Court is referred to the original brief and to such additions thereto as are made herein.

II.

The first specific error assigned is that the complainant was guilty of gross laches. This suggestion is made here for the first time. It does not appear in the answer to the bill or elsewhere. As to this, attention is called to the following facts:

The complainant attempted to enjoin the sale even before it was made. (P. 93.)

August 8, 1873, he made a tender to Richards of the entire amount of his judgment, having, of course, for its object the setting aside of the sale. (Pp. 4, 28, 42, 87.)

He had at divers times negotiations with Richards, he promising to release his claim as soon as he should be reimbursed by rents and profits, &c. (Pp. 4, 34, 42, 87.)

In January, 1878, at the instance of complainant, an ejectment suit was brought by Leonard Mackall, the trustee holding the legal title. (Pp. 4, 34, 35.) That was decided in April, 1882, and the bill in this case was filed April 11, 1882.

Courts of equity are governed by the Statute of Limitations applicable to analagous cases at law.

"For example, if a legal title would in ejectment be barred by twenty years' adverse possession, courts of equity will act upon the like limitation and apply it to all cases of relief brought upon equitable titles or claims touching said estate."

Goddin *vs.* Kimmell, 99 U. S., 210.
Elmendorf *vs.* Taylor, 10 Wh., 152.
12 Am. Dec., 368, note and cases cited.
Etting *vs.* Marx, 4 Hughes, 312.

There are no third parties to be affected by any delay; nor is it averred or shown that Richards has suffered anything in consequence of delay.

III.

Appellant claims that the questions involved in this case are, *res adjudicata*, in two cases.

One of these is case No. 2373, which has heretofore been before this Court, and in which the Court expressly states that it does not decide the questions in this case.

Mackall *vs.* Richards, (112 U. S., p. 369,) Court says, "Whether that part of the lot upon which the building stands is still the property of Mackall—that is, *whether the lots and conveyance of the marshal is valid in respect, at least, of that part of the lot—we do not determine.*"

It is manifest that no such points were involved in such case. There is no suggestion of *res adjudicata* in the answer to the bill in this case. The bill in No. 2373 was expressly confined to the part not sold by the marshal. (P. 139.)

As to the cause commenced September, 1869, this was *before* the sale, and there was *no decree* in the cause and no action had. It shows, too, that there was no neglect on his part to assert his claim. He then set up some of the grounds of the invalidity now relied upon, but not all of them. He then had no interest in the land except a parol gift by his father, which, however, he could have enforced by a bill for specific performance. Now, he has an actual conveyance from his father of an equitable interest.

It is impossible to see in this any ground to sustain the appellant's claim that this constitutes *res adjudicata.*

IV.

As to the question of attacking the regularity of a judicial sale collaterally we refer to the original brief. In Sumner *vs.* Moore,

2 McLean, 59, cited by appellant, there was a motion for confirmation of the sale and a hearing had, and a judicial decision that the sale was valid. This was an ejectment case, and an attempt was made to set up irregularities against a purchaser—a third party in a collateral action. The Ohio statute required that a sale under execution should be brought before the court for confirmation, and this was done in that case, while there is no such statute here, and there has been no hearing by any court upon these questions.

It will be borne in mind that we are making no assault upon the judgments nor upon anything whatever that has been the subject of adjudication by the court.

We claim, among other things, that the executions were *without authority*, because they did not conform to the judgments. There was no judgment *in rem*. There could be none in a case at law. Our objections all go to the *authority* of the executions.

Upon this point, in addition to what we have said in our original brief, we further call the attention of the court to the following facts:

Not one of the executions upon which sale was made was authorized by a judgment.

In Plant *vs.* Mackall the judgment was for "one hundred and twenty-seven dollars and seventy-eight cents, with interest thereon from December 3d, 1864." (P. 14.)

The execution was for $177.78 damages, $50 more than the judgment, and nothing is said as to interest. The interest would have been $32.50. (P. 15.)

In the case, too, the judgment was a personal one, while the execution was *in rem*.

In Emery *vs.* Mackall the judgment was for $1,081.15, with interest from November 12, 1864. (P. 18.)

The execution was for $1,081.15, saying nothing as to interest. (P. 19.)

The judgment was a personal one; the execution was *in rem*.

In Richards *vs.* Mackall the judgment was for $897.42, with interest thereon from June 2, 1865 (p. 22;) the execution was for $897.42, nothing being said as to interest. (P. 23.) The marshal's deed conforms to the executions and not to the judgments, reciting such judgments incorrect. (P. 25.)

These variations present not questions of irregularity as to what was done under the executions, but a question as to the *authority* to issue the executions themselves.

In Sexton *vs.* Wheaton, 4 Wh., 503, this Court says: "The purchaser depends on the *judgment*, the levy, and the deed. All other questions are between the parties to the judgment and the mar-

shal. Whether the marshal sells before or after the return, whether he makes a correct return or any return at all to the writ, is immaterial to the purchaser, *provided the writ was duly issued* and the levy made before the return."

It is "incumbent upon a purchaser claiming under a sheriff's sale to produce, besides the sheriff's deed, a judgment *and an execution* conforming therewith."

Collais *vs.* McLeod, 8 Iredell's Law, 221; 49 Am. Dec., 376.

"It is also perfectly settled with us that however an *officer* may be protected in rendering obedience to an execution, although unwarranted by a judgment, because he is not bound to look behind his writ, a *purchaser* under an execution must show not only the execution, *but a judgment which warrants and sustains it.*" (Doe on dem. of Dobson *vs.* Murphy, 1 Dev. and Bat., 586.)

See Bowen *vs.* Bell, 20 John., 338.
11 Am. Dec., 286.
Hampton *vs.* Speckenagle, 9 Sergt. and Rawle, 212.
S. C., 11 Am. Dec., n. 708.

In 13 Am. Dec., 201, this author says in note: "There is a just distinction between executions issued without authority and executions issued under an authority which is erroneously pursued. * * * The former class is *void;* the latter may with equal propriety be termed either irregular or erroneous."

These defects in the executions would be fatal even if Mackall had a legal estate which could be sold at law; but when it is remembered that he had only an equitable title, there can be no question of the sale thereon being void.

As to the assignment of error, that there is a defect of parties, it is sufficient to say that such an objection cannot be made here for the first time. It has never been suggested before, either by pleading, by brief, or in any form whatever.

The rules of the Supreme Court of the District of Columbia provide that such objection shall be taken by his answer.

See, also, Story *vs.* Livingston, 13 Peters, 375.
52 Am. Dec., 185, 412.
Story's Equity Pleadings, 541.
1 Dan. Ch. Prac., 286 to 295.
9 Wall., 501.
16 How., 1.

There can be no possible harm to Richards from any omission of parties. In the bill itself the complainant says that he is willing to allow what may be just and equitable on account of the judgments on which the alleged sale was made. (P. 5.)

Richards paid Emery and Plant out of the $2,500 bid by him. They have no further interest in the property, being paid in full. As to what Richards paid to them, he will be fully reimbursed by an allowance on account of such payment. Why, then, is it indispensable that Emery and Plant should be parties to this suit? The decree below allows to Richards all the money he has expended *in any way*, and he can suffer no wrong by such a decree.

V.

Counsel for appellant, in his brief, says that there is no proof in the case that Gooding was marshal at the time of the issuing of the writs of execution upon which the sale was made.

This is expressly stated in the bill, and expressly admitted in the answer. (Pp. 3, 34; see also pp. 15, 19, 20, 22, 23, 24, 93.)

This fact is a sufficient reply to the argument of counsel for appellant upon this point.

The decree of the court below should be affirmed.

W. WILLOUGHBY,
Counsel for Appellee.

124-183

Supreme Court U. S.
FILED
OCT 27 1884
JAMES H. McKENNEY,
CLERK.

Supreme Court of the United States.

ALFRED RICHARDS, *Appellant*,
vs.
BROOKE MACKALL, JR., *Appellee*,
No. 1,085.

From the Supreme Court of the District of Columbia.

MOTION FOR CERTIORARI.

And now comes the appellee Brooke Mackall, Jr., appearing, specially, only for the purpose of obtaining a true record, so as to properly present a motion for the dismissal of the appeal and protesting against the jurisdiction of this court for the want of a legal citation and the want of other legal proceedings, sufficient to give such jurisdiction, and respectfully suggests a diminution of the record in the following particulars, to wit:

1st. The record filed does not show with sufficient clearness whether the appeal was allowed by the court in open session or by a Justice of the court in vacation. This would plainly appear by setting forth the time of the adjournment of the court—such court having adjourned *sine die* July 5th, 1884, while the order of allowance of appeal was July 8th, 1884. The record does not show the time of such adjournment.

2d. The record filed does not show any extract from any minutes of the court in relation to the allowance of an appeal. The record should show what such minutes may be, if any; and, if none, it should be plainly shown.

3d. The record, as filed, does not plainly show who were the Justices composing the court which heard and decided the cause in the General Term of the Supreme Court of the District of Columbia. From such record, it would appear that Justice MACARTHUR, who heard and decided the cause in Special Term and who allowed the appeal, was a member of such court in General Term, while, in truth and in fact, such court was composed only of Justices CARTTER, HAGNER and COX.

4th. The record does not show what is the fact, that the citation apparently signed by Chief Justice CARTTER was not signed only by his signature being appended to a printed blank form of citation which did not contain, when so signed by him, any names of parties to this case or anything describing this case or referring to it in any manner, but it was filled out, as it now appears, by the clerk of the court at the request of the counsel for appellant, over such signature, without the assent or knowledge of the said Chief Justice, and while he was absent from the city of Washington, and he has never had any knowledge of the citation in this case.

Wherefore the appellant moves that a writ of *certiorari* issue from this court, directed to the clerk of the Supreme Court of the District of Columbia, commanding him to make return to this court under his certificate and seal of said court:

I. The date of the adjournment of the General Term of the Supreme Court of the District of Columbia, commencing the fourth Monday of April, 1884, and whether such date corresponds with the date of the decree from which the appeal is taken.

II. What is shown by the minutes of the court relating

VI. Rules 5, and 6 of the General Rules of the Supreme Court of the District of Columbia, which are as follows:

RULE BOOK.

5. A record book shall be kept in the Clerk's Office to be called the Rule Book, in which the clerk shall cause to be entered every interlocutory motion, rule, order, or step made or taken in a cause preparatory to its trial on the merits, except such as shall be made in special or general term, which are to be entered in the minutes of the court.

MINUTES.

6. The minutes of a court are, in effect, a journal of its proceedings while sitting, entered or recorded in due legal form by the clerk, and signed by the justice or justices presiding.

W. WILLOUGHBY,
Counsel for Appellee.

Appearing only for the purpose of this motion as therein specified.

DISTRICT OF COLUMBIA, *ss:*

Brooke Mackall, Jr., being duly sworn, says that the statement of facts appearing in the above suggestion are true to his knowledge, except as to those statements made upon information and belief, and as to such statements he believes them to be true. He further says that he is advised by counsel, and believes that the matter sought to be obtained by the above application for writ of *certiorari* are material and necessary for a just determination of the questions arising in the said cause.

B. MACKALL, JR.

Subscribed and sworn to before me, October 22, 1884.

[SEAL.]

R. J. MEIGS,
Clerk of the Supreme Court, D. C.
By M. A. CLANCY.
Assistant Clerk.

Please take notice that the above motion for a writ of *certiorari* will be presented to the Supreme Court of the United States on Monday, the 27th day of October, 1884, or as soon thereafter as counsel can be heard.

W. WILLOUGHBY,
Counsel for Appellee upon such motion only.

Argument.

The record now on file shows that the decree from which the appeal is taken was passed on the 5th of July, 1884. The allowance of the appeal shows upon its face that it was allowed on the 8th of July. It is a fact that will not be disputed, that the court adjourned on the 5th of July, and therefore the allowance was by a Justice in vacation, in which case a citation is required. There ought to be no room for controversy as to this fact. The allowance of the appeal has upon its face "by the court." But it is not possible that it could have been by the court in General Term, for that had adjourned. It is only desired, that this court may be informed, so that there be no room for controversy about it, whether the appeal was allowed by the court or in vacation, and this will appear from the records called for by this motion.

The record now shows the citation apparently signed by Justice Cartter, dated July 8th. This also shows that it was not served until October 7th, after the sixty days prescribed by statute, and not thirty days before the term. It also shows that no citation was issued or signed by the Justice, allowing the appeal, or taking the security. The security filed shows that it was approved by Justice MacArthur, on the 11th of July, being a different Justice from the one by whom the citation purports to be signed.

It will be claimed that this court has not jurisdiction, or if it has that the supersedeas should be vacated.

It is respectfully insisted that in order to properly present these questions, the record should plainly show, beyond controversy, such matters as may be material to the questions of jurisdiction and of vacation of supersedeas.

W. WILLOUGHBY,
Counsel for Appellee, appearing specially for this motion only.

124-183

Office Supreme Court, U. S.
FILED
OCT 27 1884
JAMES H. McKENNEY,
CLERK.

Supreme Court of the United States.

ALFRED RICHARDS
vs.
BROOKE MACKALL, JR.
No. 1,085.

Appellant's reasons against Motion for Certiorari.

The motion in this case is not made for the purpose of bringing into this court the original Record below for the inspection of the court, in order that, upon the suggestion of diminution, the court may determine what is properly the Record, but it is an application for an order commanding the clerk of the court below to send up under his certificate sundry matters of fact not part of the record, in order that the counsel for appellee may be enabled the better to prseent a motion to dismiss the appeal.

It is submitted that this is entirely irregular, and is not contemplated by the rule of this court, authorizing a writ of certiorari upon suggestion of diminution of the Record.

If we were to ask the court for a writ commanding Mr. Justice HAGNER of the Supreme Court of the District of Columbia to certify to this court, that he fixed the amount of the bond in this case as a supersedeas, and that Mr. Willoughby, the solicitor for appellee, was present and suggested the amount, we should hardly expect our appli-

cation to be seriously considered; and yet this action of Justice HAGNER, about which his recollection co-incides with ours, is just as much a part of the Record in this case as anything asked for in this motion.

The Record does show who were the Justices composing the court before which the cause was heard below, and the dates of the hearing and adjournments of that court, and if these matters are material, they sufficiently appear.

So far as the other matters set out by way of diminution are concerned, it is submitted that they are not part of the Record of the cause, and cannot be certified to this court by the clerk of the court below as such. Every question in any way raised in this motion, and the reasons upon which it is based, have been discussed and fully settled by this court, and particular reference is made to *Hudgins et al.* vs. *Kemp*, 18 Howard, 534, and *Sage* vs. *Railroad Co.*, 96 U. S., 712.

W. B. WEBB.
ENOCH TOTTEN.
For Appellant.

124-185

IN THE

SUPREME COURT OF THE UNITED STATES.

ALFRED RICHARDS, *Appellant*,

vs.

BROOKE MACKALL, JR., *Appellee*.

No. 1,085.

Motion to dismiss Appeal.

Brief of Appellee.

W. WILLOUGHBY,
Of Counsel for Appellee.
Upon this motion only.

R. O. Polkinhorn & Son, Printers, Washington, D. C.

IN THE

SUPREME COURT OF THE UNITED STATES.

ALFRED RICHARDS, *Appellant*,

vs.

BROOKE MACKALL, JR., *Appellee.*

No. 1,085.

Motion to dismiss Appeal. Brief of Appellee.

And now comes the appellee, Brooke Mackall, Jr., appearing only for the purpose of this motion, and protesting against the jurisdiction of the court, and moves to dismiss the appeal in this case, or, in case such appeal should not be dismissed, to vacate the supersedeas, upon the following grounds, to wit:

1st.

No lawful or sufficient citation in this case has been issued or signed by any Justice, no appeal having been allowed by the court or during the session of the court.

2d.

No lawful or sufficient citation in this case has been served, no appeal having been allowed by the court or during the session of the court.

3d.

No bond or security has been taken or approved by any Justice who has signed a citation.

4th.

No citation has been signed by any Justice taking bond or security.

5th.

The paper purporting to be a citation dated July 8, 1884, and served October 7th, 1884, was not signed by the Justice allowing an appeal, nor by any Justice, nor was it served in time.

6th.

The allowance of the appeal was not perfected.

7th.

The appellee has not had thirty days' notice of any citation.

8th.

Neither the defendant Mrs. Richards nor the defendant Leonard Mackall has taken an appeal, nor has an appeal been allowed to either of them.

The bill in this case was filed against Alfred Richards and wife and Leonard Mackall, in the Supreme Court of the District of Columbia, for the purpose of setting aside a conveyance of real estate to the defendant Alfred Richards, made by the Marshal of the District of Columbia, alleged to be in pursuance of an execution sale. The defendant Leonard Mackall was made a party because he was trustee of the deed under which complainant held an equitable title. The decree of the general term of the court, held by Justices Cartter, Hagner, and Cox, from which this appeal was taken, adjudged the Marshal's sale

and deed to be void, and that complainant is entitled to the property.

This decree was made July 5th, 1884, that being the last day of the term. On the 8th of July, three days after the adjournment of the court, application was made by the defendant Richards to Justice MacArthur for the allowance of an appeal, who on that day allowed such appeal to said defendant Richards. Justice MacArthur was not one of the Justices holding the court at which the decree was made, but was disqualified from being one of them, he having made the decree in the special term, which was reviewed by the general term. A bond with the condition required for a supersedeas, dated and executed July 10th, was presented to said Justice MacArthur July 11th, and on that day approved by him. He issued no citation, but there was filed in the Clerk's office with the papers what purports to be a citation signed by Chief Justice Cartter, but in fact the blank was filled out and written above his signature without his knowledge, he then being absent from the city, and this was not served until October 7th, 1884. No appeal has been allowed to either of the defendants, Mrs. Richards or Leonard Mackall, neither of them having applied for such allowance.

The result of the authorities will be found to be that the essential attributes of an appeal, which is allowed by a judge or justice out of court are—

1st. Allowance of the appeal;

2d. Issuing of citation;

3d. Bringing up the record before the court at the first term after allowance. 5 Wall., 822.

In order to make such an appeal to operate as supersedeas, there must be in addition—

4th. A bond with the conditions prescribed executed and approved by the judge who signs the citation within sixty days, exclusive of Sundays, from the date of the decree.

5th. Service of the citation within the sixty days, giving thirty days notice.

It appears that simply to make an appeal valid, the bond is not required, yet it must be taken before the appeal can be heard. Therefore, such bond has been, for good cause, allowed to be filed, even after the time allowed for the

taking of the appeal. Of course such bond operates simply to preserve the appeal, but cannot make it operate as a supersedeas (16 How., 142). So it has been held that for the mere purpose of *preserving the appeal*, the *service* of the citation may be allowed by the court, in its discretion, after the commencement of the next term; but in order to make the appeal operate as a supersedeas, such service should be within the sixty days prescribed.

The fatal defect of the appeal in this case is that no citation issued at all. This is a defect that this court cannot cure so as to preserve the present appeal. The citation should be signed by the justice *who allows the appeal.* ~~It should be at least signed by some justice. A citation, written over the signature of a justice without his knowledge or approval, is certainly not a valid process or instrument of any kind. Surely such a paper cannot be regarded as a citation such as is required to perfect the allowance of an appeal by a justice other than the one whose signature is attached to it. See 33 Am. Dec., 199; 16 Am. Dec., 342.~~

In *Ins. Co.* vs. *Mordecai*, 21 How., 201, the writ of error was dismissed because it was returnable at some day other than the first day of the term, and the court say:

> "Nor can this mistake be corrected by a citation from this court. The act of Congress requires it to be issued *by the judge or justice who allows the writ of error*, and it cannot be legally issued by any other judge or court."

In *Villabolos* vs. *U. States*, 6 How., 80, the court say:

> "The entry of the appeal in the clerk's office is analagous to the writ of error, and is returnable to the next term of the appellate court, and a citation to the opposite party to appear is necessary.
>
> "Unless the writ and citation are both served before the term, the case is not removed to the appellate court and the writ, if returned afterwards, will be quashed. Where a citation is required in case of an appeal, it must, as in the writ of error, be issued and served on the opposite party before the term of the appellate court next after the appeal is entered."

This is reiterated in 6 How., 112; 3 Wall., 49. In 1 Black, 38, the writ of error was dismissed for the want of a citation, and in 3 How., 534, because the citation was signed by the clerk.

By Sec. 705 R. S., the proceedings for a writ of error or appeal from the Supreme Court of the District of Columbia are the same as from a circuit court, and by Sec. 1012 R. S., appeals are subject to the same rules as writs of error.

By Sec. 1000 R. S., the security to be taken must be by the justice *signing the citation*. No other justice is authorized to take such security.

In 20 How., 280, the court say:

> "A party desiring an appeal should apply for it in open court, or, if to the judge at chambers, should tender to the judge *a citation for his signature* and a sufficient appeal bond.

The allowance of an appeal out of court is, as has been said, 6 How., 80, analogous to a writ of error. Both require a citation; and, as in case of a writ of error, such citation must be signed by the judge allowing it, so must a citation be signed by the judge allowing the appeal. It has been held that the allowance of a writ of error may not be required to appear expressly. 4 Wall., 447. It has also been held that the allowance of an appeal may be inferred from the fact that the sureties justified before the judge signing the citation, but when it does expressly appear by what judge or justice a writ of error or an appeal is allowed, it is plain that the citation in either case must be signed by such judge or justice.

In *Seymour* vs. *Freer*, 5 Wall., 822, the court say:

> " What is essential to an appeal is *allowance*, *citation* to the appellees or equivalent, notice or waiver, and the *bringing up of the record* at the next term of this court. Security for prosecution *should* be taken by the judge on signing the citation, but if this duty be omitted or defectively performed, a remedy can be applied here on motion."

In this case a bond was filed, and no question was made as to the citation. But the court say that where a bond has been

omitted by accident, the court may, upon motion and for good cause, allow a bond to be filed for the purposes of an appeal, referring to 2 Wall., 96, where this was done for good cause shown.

In *Alviso* vs. *U. States*, 5 Wall., 824, the court say:

> "A citation *with due return* or waiver by general appearance or otherwise, is indispensable to jurisdiction on appeal."

In *Yeaton* vs. *Lenox*, 7 Peters, 220, it was held that the citation could not be before a court then in session:

> "If the appeal be prayed for after the court has risen, the party must proceed in the same manner as had previously been directed in writs of error. The judicial act requires that a writ of error must be allowed by a judge, and that a citation shall be returned with the record, the adverse party *having at least twenty days' notice*. This notice, we understand, must be twenty days before the return day of the writ of error."

This return day *must be* the first day of the term. "The defendant must be cited to appear on the same day that the writ is returnable." 21 How., 201.

The citation, according to Sec. 999, requires *thirty* days' notice.

While a writ of error is a matter of right and does not need to be allowed, the Supreme Court cannot acquire jurisdiction without an *allowance* of an appeal. Though such allowance can be shown by necessary inference without an express allowance in terms, yet there must have been allowance by the court or judge.

> *Pierce* vs. *Cox*, 7 Wall., 787; 3 Wall., 424; 18 How., 530.

> "The want of proof that the defendant was cited has always been held to be a fatal defect in the process prescribed and required by the act of 1789, a defect which can be cured only by the voluntary appearance of the party entered on the record, nor can this defect be cured by a citation from this court. The act of Congress requires it to be issued *by the judge or justice who*

allows the writ of error, and it cannot be legally issued by any other judge or court." 21 How., 201.

In *Vansant* vs. *Gas Light Co.*, 99 U. S., 213, the appeal was dismissed for want of a citation, because, although the appeal was allowed during the term-time, yet it appeared that it had not been done by "the court while in open session." *To be regular it "should have been entered on the minutes."* There was only a direction to the clerk to enter an appeal and an approval of the bond by the Chief Justice.

The principle seems to be that if there is no citation for the reason that the appeal is allowed by the court, the appellee is bound only by the notice appearing from "*the minutes of the court.*"

In *R. R. Co.* vs. *Blair*, 100 U. S., 661, the appeal was allowed at a subsequent term of the court in open session the solicitors of appellees being present. It was held that a citation was necessary, but for these reasons and for the further reason that the appellants had reason to suppose that a citation would be waived, the appeal was not dismissed absolutely, but the appellants were permitted to cause a citation to be issued and served to a subsequent date.

In *Dayton* vs. *Lash*, 94 U. S., 112, the *mere service* of the citation where there was no question about its having been duly issued, not having been made before the first day of the term, was held not to avoid the appeal, and that as "some attempt was made to serve the citation, which the appellants may have supposed was actually completed," the appellants were allowed to cause the issue of a new citation.

In *Ex parte* Crenshaw, 15 Peters, 119, where a citation had not been served, a fact which escaped the attention of the court, and judgment had been reversed, the court at a subsequent term revoked this decree and adjudged the proceedings to have been an absolute nullity.

In 1 Cr., 365, the court say: "A citation not served is no citation."

The appeal should be dismissed, because the defendant, Mrs. Richards, the wife of the appellant has not taken an appeal.

In *Owings* vs. *Kincannon*, 6 Peters, 399, the court say that all parties who are *united in interest* should join in the appeal. How could there be greater unity of interest than between husband and wife? She is directly interested through her contingent dower interest in the question at issue. See also 8 Peters, 526; 11 Wh., 414; 6 Wall., 355, and 11 Wall., 82.

But if the court should not be satisfied that the appeal should be dismissed the *supersedeas* should be vacated. The appeal, if so taken, as not to require an absolute dismissal, was not perfected within the sixty days required, nor has it yet been perfected.

A *supersedeas* is a statutory remedy, and strict compliance with the conditions prescribed is required. (93 U. S. 412, 11 How., 297; 7 Wall., 575.)

In *Sage* vs. *R. R. Co.*, 96, U. S. at p. 715, the court say: "Until the security has been accepted the allowance of the appeal cannot be said to have been perfected." The statute providing how a *supersedeas* may be obtained, and the condition of the bond required, (Sec 1,000, R. S.,) also provides that such bond shall be taken by a judge or justice "signing a citation."

In *Kitchen* vs. *Randolph*, 93 U. S., at p 86, the court say, that *supersedeas* depends not only upon the condition of the bond, but "upon the prompt issue and *service* of the writ."

In the case at bar there was no service of any citation *within sixty days.*

In *Tel. Co.* vs. *Eyser*, 19 Wall., 419, the say:

> "As the judge *who signs the citation* is still required to take the bond, we think it sufficiently implied that it may be served at any time *before* or simultaneously with the filing of the bond."

In the case at bar no bond was taken by any justice *signing a citation*, and no citation whatever was served until Oct. 7th.

In *French* vs. *Shoemaker*, 12 Wall. 99, the court say:

> "The question of sufficiency must be determined in the first instance by the judge *who signs the citation.*"

In *Boyce* vs. *Grundy*, 6 Peters, 77, the appeal was dismissed because "the transcript of the record showed that no appeal bond was taken or approved by the judge who signed the citation in the cause."

See also 5 How. 210.

In *Black* vs. *Zacharie*, 3 How. 485, the court refused a writ of supersedeas where a bond had been offered to the Judge below and refused, on the ground that such judge was the sole and exclusive judge of such sufficiency.

In *Ex parte Milwaukee Co.*, 5 Wall. 188, the judge below had refused to approve a bond for supersedeas upon the ground that the sureties were non-residents. The court held this to be an insufficient reason, and, although it refused the mandamus applied for, it allowed a bond to be filed, to be approved by the clerk. But in this case the appeal had been allowed, and the parties had done all in their power. The court say:

> "*The case being properly in this court* by appeal, we have, by the fourteenth section of the Judiciary Act, a right to issue any writ which may be necessary to render our appellate jurisdiction effectual. For this purpose the writ of supersedeas is eminently proper in a case *where the circumstances justify it*, as we think they do in the present instance."

An examination of that case will show that justice would have been absolutely defeated without the writ of supersedeas.

In *Rubber Co.* vs. *Goodyear*, 6 Wall. 153, the court say that the sufficiency of the bond must first be determined by the judge signing the citation, but after the allowance of an appeal the court may pass upon the sufficiency of the bond.

In Phillips Pr., p. 108, the author refers to these last two cases as the only exceptions which have been made to the general rule, which is, as he says:

> "Though time may be given to execute the security, it would still seem from the words of the statute that it is only the 'judge or justice signing the citation' who is authorized to take it. Where time has been given, the order of the Supreme Court has generally conformed to this provision."

In the *Slaughter-house cases*, 10 Wall., at p. 271, the court say that:

> "Power to issue a supersedeas to a judgment rendered in a subordinate court does not exist in this court where the writ of error is not sued out and *served* within ten days from the date of the judgment, except where the aggrieved party is obliged to sue out a second writ of error in consequence of the *neglect of the clerk* below to send up the record in season, or where the granting of such writ is necessary to the *exercise of the appellate jurisdiction* of the court, as when the subordinate court improperly rejected the sureties to the bond because they were not residents of the district."

The action of the court in 5 Wall. 188 is thus placed upon the ground that such writ was necessary to the *exercise* of the *appellate* jurisdiction which had already been acquired.

In 21 Wall. 17, the determination of the judge signing the citation was held to be final as to the facts *then existing*. If circumstances had subsequently *changed*, then the Supreme Court could pass upon the sufficiency of the bond in view of such changed condition of facts. The court say, in 6 Wall. 153, referred to:

> "The question of the sufficiency must be determined in the first instance *by the judge who signs the citation*, but after the allowance of the appeal this question, as well as every other in the cause, becomes cognizable here."
>
> "In equity cases the appellate jurisdiction of this court attaches upon the allowance of the appeal. The 22d section of the Judiciary Act requires that the

security be taken by the judge who signs the citation on appeal."

In *Silver* vs. *Ladd*, 6 Wall. 440, the court say:

> "The law requires that the judge *signing the citation* shall take good and sufficient security. This doubtless is equivalent to a provision that the judge shall approve the bond. But no particular *form* of approval is required. Appeal may be inferred from the facts of the transaction. And we think it a fair and necessary inference from the facts of the sureties being sworn to as to their sufficiency by the judge *who signs the citation*, that the security was taken by *him* as required by law."

In *National Bank* vs. *Omaha*, 96 U. S., 737, a bond had been approved by the clerk and not by the judge. The court say:

> "Even though an appeal is asked for in open court, *if the security is not taken until after the term*, a citation should be issued to bring in the parties, unless they voluntarily appear, for until the security has been accepted the allowances of the appeal cannot be said to have been perfected, and the security upon writs of error and appeals must be taken by the judge or justice."

The same was held in *O'Reilly* vs. *Edington*, 96, U. S., 724, but in that case the court had ordered the clerk to approve the bond, and "as the omission was undoubtedly caused by the order of the court," the appellant was permitted to file a bond with *supersedeas* directing it to be approved by the judge *authorized to sign a citation*. In this case the appeal was allowed *by the court*.

In *Kitchen* vs. *Randolph*, 96, U. S., 86, the court say that the law as it now stands, (Sec. 1007, R. S.) is *not* silent as to the *service* of the writ as stated in *Telegraph Company* vs. *Eyser*, and it *is* said when it must be served. If a *supersedeas* is asked for when the writ is obtained, the writ must be sued out *and served within the sixty days*, and the requisite bond executed when the citation is signed. But by a subsequent provision of this section, *if the writ*

has been served within the sixty days as a matter of favor, permission could be obtained from a judge of the Appellate Court subsequently. "Prompt action in respect to the writ was required and indulgence granted only as to the security." * * *

> "Under the law, as it now stands, *the service of a writ of error or the perfection of an appeal within sixty days*, Sundays exclusive, after the rendering of the judgment or the passing of the decree complained of, is an indispensable prerequisite to a *supersedeas*, and *it is not within the power* of a justice or judge of the Appellate Court to grant a stay of process in the judgment or decree, if this has not been done."

What was done in *Telegraph Company*, vs. *Eyser* 19 Wall., under the Act of 1872, could not be done under Sec. 1007, R. Statutes.

In *Peugh* vs. *Davis*, 110, U. S., 227, the court held that where an appeal was allowed *by the court*, it was within the power of a justice of the Appellate Court to grant a writ of *supersedeas*, distinguishing allowances of appeal by the *court* from an allowance by a judge where citation and service are necessary. The court say that while it had been decided in *R. R.*, vs. *Blair*, 100, U. S., 661, that if the bond had not been executed during the term citation was necessary, yet that "that related only to *procedure* under the appeal, and was not in conflict with former decisions as to the effect of an *allowance* of an appeal by the judicial act of the court in session."

The court reaffirm the doctrine of *Kitchen* vs. *Randolph*, 96, U. S., and say that either the writ of error must have been issued *and served* or an appeal *allowed* within the sixty days.

The necessity of a citation, where the bond has not been taken until after the court, even though the allowance was by the court, is also decided in *Hoskins* vs. *R. R. Co.*, 109, U. S., 106. This case also decides that the security must in such case be taken by the judge who signs such citation.

In *Sage* vs. *Central R. R. Co.*, 93, U. S., 412, Justice Miller of this court had, after the expiration of the sixty days, allowed a *supersedeas*, an order having been made by

the court that the appeal might be regarded as having been taken and perfected within the sixty days. The court say:

> "The order of the court to the effect that if the bond should be given the appeal might be regarded as taken and perfected December 16th, was of no effect for the purpose of a *supersedeas*. While it is true that the court may enter an order in a cause, *nunc pro tunc*, where the action asked for has been delayed by or for the convenience of the court, *it is never done where the parties themselves are at fault*, or where it will work injustice. A *supersedeas* is a statutory remedy. It is only obtained by a strict compliance with all the required conditions, none of which can be dispensed with. Time is an essential element in the proceeding, and one which neither the court nor the judges can disregard. If a delay beyond the limited time occurs, the right to the remedy is gone, and the successful party holds his judgment or decree freed and discharged from this means of staying proceedings for its collection or enforcement. This is a right which he has acquired and of which he cannot be deprived without due process of law. The court can no more give effect to a *supersedeas* by ordering that the appeal shall relate back to a time within the sixty days, than it can to an appeal taken after the expiration of two years, by dating it back to a time within the limitation. To make a *nunc pro tunc* order effectual for such a purpose it must appear that the delay was the act of the court and not of the parties, and that injustice will not be done."

The *supersedeas* granted by Justice MILLER was vacated in this case.

In this case there is no possible excuse for extending any favor to the appellants even if it were within the power of the court to grant it. Indeed the power to grant a *supersedeas* is not given to *this court* under any circumstances after the expiration of the sixty days, but it can be given only "with the permission of a *justice or judge* of the appellate court," and no application has been made to such *justice or judge*.

The consideration of this power by this court has been in cases where action held by such justice has been reversed, and in the exercise of appellate jurisdiction. But according to *Kitchen* vs. *Randolph*, 93 U. S., the want of service during the sixty days in case of appeal allowed in vacation is conclusive that such appeal did not operate as a *supersedeas*, and that there is now no power anywhere to cause it to so operate.

The appellee is entitled to an immediate hearing of this motion, both because it raises a question of jurisdiction, and otherwise the appellant would have the benefit of a *supersedeas* when he may not be entitled to it.

W. WILLOUGHBY,
Of Counsel for Appellee.
Upon this motion only.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM—1884.

ALFRED RICHARDS, *Appellant*,

vs.

BROOKE MACKALL, JR. } No. 1,085.

Brief of Appellant on Motion to Dismiss.

The appellee moves to dismiss the appeal in this cause for eight different reasons, set out in his motion, which will be discussed by us under heads:

It is objected that no lawful or sufficient citation has been issued or signed by any justice or served, no appeal having been allowed by the court or during the session of the court.

It is further objected that the citation found in the record, bearing date July 8th, 1884, was not signed by the justice taking the bond for security, nor by the justice allowing the appeal, and furthermore, that it was not signed by *any* justice, and

the Associate Justices. Of this the appellee complains, and contends that, in fact, the appeal has not been perfected according to law. If it be true that the "allowance" of an appeal is only an authority from a Justice to the Clerk to send up the transcript, then this objection is without merit. It is well established that in cases where the appeal is prayed in open court at the time of the passing of the decree, no citation is necessary. With so strict a construction as that contended for here what becomes of the provision of the statute to the effect that the citation shall be signed "by a judge of such Circuit Court?"

The citation is not necessarily a part of the record; it forms no part of the proceedings below. The presumption is that one issued when the writ of error was allowed, and was in due form; this may be proved *aliunde*.

Inerarity vs. *Byrne*, 5 Howard, 295;
Hudgins vs. *Kemp*, (*sup.*);
Martin vs. *Hunter*, 1 Wheat., 304.

3. Can a valid citation be made by a justice other than the one who takes the security, *and vice versa?* The appellee argues that this cannot be done. If it be true that a citation is not always necessary, it is fair to argue that the two acts, that is to say, the signing of the citation and the taking of the security required, may be performed by two different justices. The case above cited (*Hudgins* vs. *Kemp*), should seem to settle this question, if there be a

question. Indeed, as the law now stands, the security may be taken *at any time*, under certain circumstances, by one of the justices of this Court. It can hardly be argued that such a *supersedeas* would be void, because the justice taking it was not the same who signed the citation. A citation is only a notice; it is not a writ or process. (*Cohen* vs. *Virginia*, 6 Wheat., 264; *Nations* vs. *Johnson*, 24 How., 195.) The citation forms on part of the proceedings below, and constitutes no part of the record. The presumption being that one was issued when the appeal was allowed (*Inerarity* vs. *Byrne*, 5 How., 295); proof *aliunde* will be heard as to the issuing and service of the citation if needful.

4. Thirty days' previous notice of the docketing of a cause is not essential. The authorities relied upon by the appellee are out of date, and can have no application now, in view of the extent of the docket of this Court. The appellee has overlooked the fifth paragraph of the eighth rule of this Court, which provides that "in cases where final judgment is rendered more than thirty days before the first day of the next term of this Court, the writ of error and citation, if taken before, must be returnable on the first day of said term, *and be served before that day.*" In this case, the citation was signed and issued on the 8th of July, 1884, and was lodged in the Clerk's office; it appears that it was not served by the Marshal on the appellee until the 7th day of October, 1884. Why this delay occurred we are not

advised ; possibly it was because the appellee could not be found. But the rule of Court was fully complied with. (See the affidavit with this brief as to notice, citation, &c.)

Upon this part of the argument we refer to the following cases :

R. R. Co. vs. *Blair*, 100 U. S., 661 ;
Dayton vs. *Lash*, 94 U. S., 112.

The appellee, in his fifth reason assigned in support of his motion, intimates that the citation "was not signed by the justice allowing an appeal *nor by any justice.*" It is not easy to understand what he means by the latter part of this reason; the citation which he prints for the information of the Court appears to have been regularly signed by the Chief Justice.

It is submitted that the motion should be denied.

WM. B. WEBB,
ENOCH TOTTEN,
For Appellant.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
October Term, A. D. 1884.

ALFRED RICHARDS,
Appellant
vs.
BROOKE MACKALL, JR.
Appellee.
} No. 1085.

DISTRICT OF COLUMBIA,
County of Washington. } *ss:*

William B. Webb, being first duly sworn, deposes and on his oath says, that he is one of the counsel for the appellant in the case of *Alfred Richards* vs. *Brooke Mackall, Jr.*, No. 1085, October Term, 1884, in the Supreme Court of the United States; that sometime about the eighth day of July, A. D. 1884, application was made to the Honorable A. B. Hagner, one of the Associate Justices of the Supreme Court of the District of Columbia, to specify and fix the the amount of security to be given as a *supersedeas* in the above named cause, and that the appellee by his counsel, W. Willoughby, Esq., appeared before Mr. Justice Hagner at that time, and was heard in behalf of the appellee in relation to the amount and character of the security to be given; that the amount of the supersedeas bond was fixed by Mr. Justice Hagner at the sum of $15,000.00; and that afterwards said bond was approved as appears in the record. Said amount was fixed at the request of the said Willoughby and against the pro-

test, that the penalty was too high, on the part of this affiant.

He further deposes and says that when the transcript of the record in said cause had been made and was ready to be certified by the clerk of the Supreme Court of the District of Columbia, the said counsel for the appellee appeared before the said clerk, in his office, and made argument in behalf of his client and insisted upon having alterations in and additions to said transcript made by the clerk.

He further deposes and says that he has this day examined the docket entries in the clerk's office and it there appears that the citation in this cause was issued by the Clerk of the Court on the day of its date to wit: the 8th day of July, A. D. 1884, and that a copy thereof was issued at the same time, and he further says that the same were left in the clerk's office for the purpose of having the same served upon the appellee by the Marshal of the District of Columbia; but that the same was not actually served, as he believes, until the time mentioned upon the face of said citation, but why such delay in service occurred he is unable to state but supposes that it was an oversight.

The docket entries are in the words and figures following:

"1884, July 8. Appeal to Sup. Court U. S. by Alfred Richards ordered—precipe filed.

"1884, July 8. Appeal to Sup. Court U. S. by Alfred Richards', citation and copy issued;"

The clerk's office of the Supreme Court of the District of Columbia is open at all times and the docket subject to inspection, and that the appellee and his counsel are very frequent visitors to said office.

He further deposes and says, that he had several conversations with the said Willoughby with regard to said appeal which appellant had taken, and that said Willoughby had full knowledge of the intention to take and perfect such appeal more than thirty days before the commencement of the present term of the Supreme Court of the United States.

W. B. WEBB.

Sworn and subscribed to before me, this 28th day of November, A. D. 1884.

[SEAL.] HENRY R. ELLIOTT,

U. S. Commissioner for the Dist. of Col.